

## Written evidence submitted by Cllr John Crawford [FPS 008]

### Preface

I have previously submitted a holistic set of Tenterden Town Council views on the MHCLG White Paper for this inquiry. Unfortunately, due to time pressures to meet the select committee closing date of Friday 30 October 2020, it had not been possible to discuss and agree a number of other specific topics with the council. The purpose of this submission is to provide my personal observations as a councillor and as chair of the council planning committee. These are given in good faith based on my understanding of the current system.

The white paper states: “Local Plans should be subject to a single statutory ‘sustainable development’ test, and unnecessary assessments and requirements that cause delay and challenge in the current system should be abolished”. Since sustainability is so important, why has this single test not been published for forensic assessment during MHCLG consultation period?

I believe the white paper is misguided. Sustainability is a multifaceted and complex set of tests for local plans, proposed development sites and their locality. I will share some major sustainability issues experienced by parishes with this inquiry, along with a few other well-known predicaments.

1. Use of TRICS®
2. Definition of windfall sites
3. Transparency and quality of site information
4. Development deliverability
5. Planning Obligations

#### Use of TRICS®

Limited content on assessment tool used by developers to assess cumulative impact on traffic flow.

#### Definition of windfall sites

The term 'windfall sites' refers to those sites which become available for development unexpectedly and are therefore not included as allocated land in a planning authority's development plan. Today there is very little in legislation that defines a windfall site making it difficult to correctly assess.

#### Transparency and Quality of Site Information

There should be a legally binding set of robust rules for the provision of transparency and quality site information with planning applications to allow meaningful assessment by consultees and the LPA. With the concept of the white paper's radical digital approach to modernise the planning process, this should be easy to achieve.

#### Development Deliverability

MHCLG is probably right in saying that the delivery of housing is not keeping pace with needs. However, placing the blame with the LPA instead of the developers, is wrong. Each year a chart showing housing delivery against the target five-year housing supply is produced. If MHCLG wish the LPA to take greater involvement in housing delivery there has to be a mandatory delivery test during the planning decision-making process. It should objectively identify the inhibitors of housing delivery for mitigation.

#### Planning Obligations

Planning obligations have to be submitted with the outline / full planning application before determination. It is important for parishes and the community to know if the developer is going to cover the extra costs for infrastructure and services. It is critical for the community to review, assess and where necessary challenge the proposed obligations.

## **Is the current planning system working as it should do?**

### **1. Definition of Windfall Sites**

As there are no supporting infrastructure schemes in the local plan for windfall sites, greater assessment emphasis must be placed on how windfalls should be treated within the NPPF and what would be an acceptable size.

Without guidance, the system could be abused by developers with large windfalls as there are no planned infrastructure schemes to support them. As our current system is “plan led” and not “developer led”, windfalls have to be handled with great care. For organic growth in town and villages, small windfall sites can make a useful contribution as they are more easily absorbed, and thus sustainable.

In 1998, the Select Committee on Environment, Transport and Regional Affairs Tenth Report said:

The term 'windfall sites' is used to refer to those sites which become available for development unexpectedly and are therefore not included as allocated land in a planning authority's development plan.

For example, a bus depot may shut down or an industrial site become vacant which may provide a suitable location for housing. However, local authorities are not allowed to take into account the contribution of any windfall sites over one hectare when drawing up Housing Land Availability studies (HLAs) with housebuilders. Planning Policy Guidance note 3 recommends that:

- an allowance is made for small sites below 0.4 hectares which should be clearly justified and not over-estimated;
- a further allowance can be made for sites between 0.4 and 1 hectare based on past experience and evidence they will emerge; and
- no allowance should be made for sites above 1 hectare

With the introduction of the 2011 Localism Act and the NPPF, the first paragraph above was maintained, but the rest has got lost in the mist of time.

To eliminate ambiguity from the planning system and to remove the temptation of developers taking advantage of a missing definition, it is strongly advised that a formal definition is reinstated. The rationale is that the system should not be abused as required services and infrastructure have not been taken into consideration within the local plan. It has to be remembered that for major and significant windfall sites, there are more likely to be unsustainable. Whereas, small windfalls are more absorbable.

### **Recommendations:**

- a) As part of the “planning of the future” act of parliament, MHCLG need to stipulate the maximum hectare size and density within a windfall site. Other characteristics may also need to be added.

### **2. Use of TRICS®**

One of the developers' required assessments is the cumulative traffic flow impact on the surrounding neighbourhood and onto the main artery roads. The developers consider what available transport

(cars, buses, trains, bicycles, and walking) exist for sustainable living to access services, shops, and jobs.

When a developer wishes to calculate potential traffic and transport generation for their proposed development, they tend to refer to TRICS® to ascertain if it is possible to produce a meaningful prediction.

The TRICS system is an interactive database and data analysis system comprising of a number of transport survey records of individual developments across a wide range of land uses across the country.

The key to a successful TRICS analysis is to select towns and associated developments with a very close match to the proposed development in question. It attempts to match classification (urban / rural), number of dwellings of the village / town, population, existence of bus and train transport and type of road network. However, the database is not complete and it proves difficult to find a similar village / town with near identical characteristics to the village / town where the new site is proposed to be developed.

Though the TRICS database is noticeably incomplete, developers will attempt to align their site with an appropriate village / town on the TRICS database. Sometimes they can be successful, other times it would not be possible. This is a major tool for determining sustainability of the location.

One of the drawbacks of the TRICS system is it cannot determine the traffic impact on streets with on-street parking where the flow of two-way traffic is already seriously impeded.

#### **Recommendations:**

- a) As a matter of urgency, a thorough review of this assessment tool should be undertaken to ensure meaningful conclusions, both good and bad to be published by the developers. The aim should be the output of the TRICS analysis to be lodged on the new digital tool.
- b) One of the outputs from TRICS must be the degree of correlation between the proposed site and the sample site of the similar village / town. Typically, If the coefficient value lies between  $\pm 0.50$  and  $\pm 1$ , then it is said to be a strong correlation. Moderate degree: If the value lies between  $\pm 0.30$  and  $\pm 0.49$ , then it is said to be a medium correlation; and so on. For this exercise any meaningful traffic impact assessment should show a strong correlation.
- c) Developers should, by law, show which streets in the immediate vicinity of the site with considerable on-street parking will impact the increased traffic flow generated by the new developed. Without this information, it is not possible to consider mitigation actions.

### **3. Transparency and Accuracy of Site Information**

The principle issue for consultees is often there is inadequate disclosure due to poor standards of documentation and deficient assessment of the sites provided by developers and their agents. It is then the obligation and burden of the consultees to investigate and supplement the information from other sources. This is very time consuming, and in many cases may not be available without an independent site survey (which the developer normally refuses).

Without full disclosure, it is not possible to apply any sensible sustainability test.

It should be made mandatory for developers and their agents to identify and document ALL relevant and pertinent species, habitats, landscape characteristics that are specified in the relevant acts, supplementary planning documents and county and nationwide records. An illustrative list below:

- a) Section 41 of Natural Environment and Rural Communities Act 2006 for Habitats
- b) The Countryside and Rights of Way Act 2000 for AONBs and PROWS
- c) Environment Act 1995 for the protection of ancient hedgerows
- d) Environmental Protection Act 1990 dealing with contaminated land

- e) The Wildlife and Countryside Act 1981 (as amended) is the principle mechanism for protection of wildlife in Great Britain.
- f) Other acts that have to be adhered to as part of the planning process such as the new Environment Bill
- g) Supplementary Planning Documents (SPD) such as Landscape Character Assessments.
- h) National records of species such as
  - i. Kent & Medway Biological Records Centre (KMBRC)
  - ii. Kent Reptile & Amphibian Group (KRAG)

Today, developers pay specialist agents to produce supporting documentation for planning applications. They are typically:

- a) Arboriculturists;
- b) Environmentalists;
- c) Hydrologist;
- d) Landscape
- e) Transport Specialists;
- f) Historical and Architectural Importance;

These agents should understand the planning system as to what is material information. Unfortunately, when reading statutory and non statutory consultee objection letters, consultees highlight a whole swathe of missing information which could and often is detrimental to the application being acceptable.

With application decision making, comes great responsibility. Get it wrong and the repercussions will result in adverse consequences for generations to come.

With this proposed white paper, we have an ideal opportunity to place responsibility onto the developers for comprehensive and quality site disclosure for the first time. If developers are confident of their proposed site, there should be no problem providing quality and complete assessments in digital form.

As a starting point, desktop surveys are a good source of information as illustrated above, unfortunately they are not always complete due to the remoteness of the site to the existing community and lack of previous surveys.

Actual site surveys are an essential practice for developers over 10 dwellings, but again the completeness of the information can be inadequate and quality of the actual survey questionable.

As it would not appear be sensible or possible to have a “white list” of approved agents for developers to use, the more practical approach is to set standards for surveys that must be adhered to.

### **Recommendations:**

- a) All relevant and pertinent information must documented in the application supporting documents, and eventually the new digital database, which should enforce quality and consistency standards. This information can then be objectively used by all to consider threats to the site and opportunities to improve the site. Without the quality and inclusive information, it is very difficult to conduct any meaningful assessment, unless supplemented by consultees although it should not be their principal role.
- b) New planning law should insist on the above disclosure to ensure transparency and to motivate faith in the planning system, for all major and significant developments.
- c) Digital tools as promoted by the white paper would be an excellent facilitator. It will ensure a consistent level and quality of information to allow a successful decision-making process by the LPA. The new digital service should support the legal enforcement.

These recommendations will reduce the work load on consultees both statutory and non statutory, and install confidence with the general public and parish councils. A “Win Win” for all concerned.

### **Arboriculturists**

Arboricultural impact assessment is an important part of any planning application. This is often an overlooked topic, but could have dire consequences if the assessment and recommendations get it wrong. The biodiversity that are reliant on trees and hedgerows are often understated and not understood. Notwithstanding the importance of climate change and clean air that are reliant on trees, shrubs and foliage.

We have to ensure the proposed site is sustainable with no biodiversity loss after development.

Natural England and other bodies promote standards and importance of :

- a) Protection ancient or veteran trees
- b) Protection of ancient hedgerows
- c) Building near tree root systems
- d) Rich biodiversity for varying tree species
- e) Importance of die back and decaying fallen trees

### **Recommendations:**

- a) Standards should be legally set for assessments and documentation on the digital platform for all to view.
- b) All trees should be subject to an iTree (or similar) assessment to establish the environmental, ecological and financial value of the tree. The Tree Council recommend this assessment to fully value a tree in terms of biodiversity, habitat and environmental factors.

### **Environmental**

The principal environment document in support of the planning application must state the key characteristics of the site. Though not inclusive, these typically would cover:

- a) List all recorded amber and red list species on bonafide records such as the Kent & Medway Biological Records Centre and Kent Reptile & Amphibian Group.
- b) Which of these are endangered and protected species which would be impacted by the development? How would the impact be mitigated?
- c) List all habitats listed by JNCC as per Section 41 of Natural Environment and Rural Communities Act 2006 that would be found on the proposed site. Which of those habitats would be impacted by the development and how the loss would be mitigated?
- d) List which protections under the Countryside and Rights of Way Act 2000, Environment Act 1995 and Environmental Protection Act 1990, The Wildlife and Countryside Act 1981 would be impacted by the development of the proposed site and stated how the issues would be mitigated.

With the disclosure of relevant information, the consultees will be able to understand the multidimensional quality of the site. It should be transparent which issues need to be mitigated and which cannot be mitigated. Potential biodiversity loss can be identified, considered and conclusions reached. This is one of the key focal areas for site and locality sustainability assessments.

Instead of consultees attempting to identify missing pertinent material information, they can devote time to what should be mitigated. The existing process would in effect be streamlined and give confidence to protecting the environment based on existing laws.

### **Recommendation:**

The “planning for the future” act through secondary legislation should set:

- a) Mandatory disclosure of information from bonafide sources.
- b) Assessment standards, which would include selected seasons to identify which species, the survey timescale and frequency.
- c) Standards on the use of technological survey tools such as the detection of differing bat species.

## **Hydrologist**

Agents are still use flooding event predictions based on historical data. For example, they may say a potential flooding of 1 in 100 years or 1 in 500 years. This is beneficial for the developer to demonstrate there are minimal flooding risks for a particular site. Historically, we have always been able to predict these extremes by looking at how often they occurred in the past. However, the last few decades have shown it is a fallacy to use historic data for predicting the future world of flooding.

Many hydrologists have raised the alarm how a stationarity approach to identifying flooding is not working. Over the past few years there has been an increasing number of articles on stationarity and non stationarity climate change and the impact on planning projects. In 2008, an international group of scientists announced in the journal Science that “stationarity is dead,” and it was time we accept we're living on a non-stationary planet. One of the most recent reputable scientific journals<sup>1</sup> on climate change states that: “Floods and other dangerous weather extremes are only getting more intense and more frequent as our climate warms”.

A recent study, published in Science Advances, reveals just how many of those flooding forecasts based on the past actually fall short. In just a decade, the findings suggest, the climate has shifted so drastically that the frequency of past extreme events is no longer a reliable predictor.

In conclusion, the correlation divergence will significantly increase, as can be observed, by our local climate shifting to long dry summers and extreme wet winters. Last winter is potentially the new norm of extreme wet winters with conceivably worse to come in the future. Therefore, using historic data is no longer a reliable and scientific approach for adoption to predict flooding. This paradigm shift been recognised by “The Thames Estuary 2100 Project” to ensure there are no dire London flooding consequences should the wrong model be used.

We have to discard the notion that our history can dictate future weather patterns and the Suds and other infrastructure we will need for new housing. In reality, the mechanics of waterways and ground permeability are key to whether a proposed development can or cannot be sustainable. It has to be accepted that visible and underground waterways (ditches, ponds, streams, culverts, etc) will be impacted by the increasing wet winters with the consequence of flooding in areas not previously recorded by statutory bodies.

Any building works alongside these waterways will increase surface water and with impermeable ground will be particularly difficult to mitigate with any degree of certainty, if at all. Where will the water go once the Suds system is full? The result is unfortunately potentially very damaging surface water flooding making the site and immediate locality unsustainable.

## **Recommendations:**

- a) Developers should no longer quote past historic data to justify an argument. It is no longer valid or creditable.
- b) This white paper has the opportunity to set new standards to be adopted by the planning system and developers. Very recently our Prime Minister signed an accord with the U.N. on climate change. Here is an ideal opportunity to put words into action to avoid building where serious flooding would occur based on the new climate paradigm shift.

<sup>1</sup> <https://www.sciencedaily.com/releases/2020/03/200318143722.htm>

## **Landscape**

Landscape by existing settlements can be iconic and beautiful and serve not just as aesthetic scenery, but is of environmental importance for biodiversity and industries relying on food security and tourism. Not forgetting the importance of green space for physical and mental wellbeing.

A number of LPAs, have produced a supplementary landscape character assessment that quantifies the characteristics and importance to the area. These tend to be documented as part of the SPD. Unfortunately, developers and their agents have been known to overlook this information.

In addition, a number of bodies such as the “Wildlife Trusts”, use a renowned tool called the Ratcliffe Criteria. It assesses naturalness, size, rarity, general diversity, habitat diversity, fragility, typicalness, recorded history, potential value and intrinsic appeal. This assessment gives an objective ecological value which will highlight all or parts of the site that should be protected. Unfortunately, agents do not use this tool and therefore it is difficult to ascertain the sites value unless an independent survey permission is given by the developer (this is unlikely). Higher the value, the less sustainable the site.

All these characteristics need to be measured up against the proven need for housing that has to be built in the right place with the necessary supporting infrastructure and ensure sustainability.

### **Recommendations:**

- a) The new “planning for the future” act of parliament to legislate that developers must disclose if their site is part of a designated local character assessment
- b) Any greenfield site with a proposal to build a substantial number of dwellings should be evaluated using the Radcliffe Criteria or similar recognised standard

## **Transport Specialists**

- a) Manual of Streets

Manual of Street is a well adopted document to guide whether sites are sustainable for walking to key services such as primary school, shops, library, post office and GP surgery. It is expected to be used for the design, construction, adoption and maintenance of new residential streets, but it is also applicable to existing residential streets subject to re-design.

One of the elements quoted by developers is the walking distance from the site. For small sites the actual location of individual houses to the services would be within an acceptable  $\pm$  margin of 800m. However, for larger sites, measuring from the site entrance to the services does not give an accurate or unbiased assessment. It has been known that developers will quote distances as “the crow flies”, which have absolutely no bearing on actual walking distances.

“The Planner” publication (business monthly for planning professionals ) says that the aspiration should be for everyone to live within a five-minute walk (400m) of a significant green space or park, and never more than 10 minutes (800m). Everyone should live within a five-minute walk of basic local facilities, including shops, and never more than 10 minutes so the site is sustainable.

### **Recommendation:**

To impartially assess the sustainability of walking distances, it is recommended that:

- i. Start of distance measurement from the midpoint of the site to the services. Some dwellings will be less than 800m and some dwellings greater than 800m. Nevertheless, this would be an equitable solution.
- ii. All walking distances should be the actual distances via adopted footpaths, either in their own right or adjoining roads. Developers must stop using “as the crow flies”.



## **In seeking to build 300,000 homes a year, is the greatest obstacle the planning system or the subsequent build-out of properties with permission?**

### **Development Delivery**

Whitehall have a housing delivery test assessment of whether councils and other LPAs are overseeing development of enough homes for their area. It is presented as a percentage of homes delivered against the number required over the past three years. These crude tools are unfairly used to criticise LPAs whose job is to grant acceptable planning permission, whereas it is the developers who deliver houses.

If the government wishes the LPAs to take greater involvement in housing delivery, then there has to be a mandatory test during the planning decision making process that objectively identifies the inhibitors of delivery. This tool could be created as a standard for adoption by all LPAs during the planning application decision process to show if the developer can or cannot deliver in an acceptable timescale.

The new tool would ask a number of basic questions of the developer such as:

- a) Are there any restrictive covenants for building or connecting to infrastructure services?
- b) Do rights of way need to be approved with another landowner for access?
- c) Though the water authority has a legal duty to connect a water supply, can they provide the capacity and pressure in the timescale?
- d) Can the water company accept the increase of surface water flows in the timescale?
- e) Can the sewage company accept the increase in effluent in the timescale?
- f) Can the gas company provide the network capacity and connect in the timescale?
- g) Can the electricity company provide the network capacity and connect in the timescale?

These are illustrative, but no doubt there are many other tests that could be adopted within the new developers' delivery test. A number of these tests are reliant on a provision to potentially build expanded or new networks that can be achieved to meet the five-year housing supply.

### **Recommendation:**

- Create and adopt the minimum standard of deliverability tests to be adopted by LPAs as part of the application decision-making process.
- The first condition of any planning permission to state the delivery issues and the timescale that have to be resolved. If not achieved within the agreed timescale, the permission is revoked.

### **Planning Obligations (Commonly Known as S106 and CIL)**

As we know, planning obligations are agreements made between local authorities and developers and are attached to a planning permission to make development acceptable, which would otherwise be unacceptable and probably unsustainable in planning terms.

Today these are frequently used for a number of purposes, such as contributions for affordable homes, utility capacity, infrastructure, services and open spaces.

Any major to significant housing development, that is greater than the natural organic growth of the town, will most likely have an adverse impact on existing infrastructure and services. It is the community and the general public who bears the brunt of the impact on services, but have no say in what the mitigating obligations should be.

Naturally, it is not possible for hundreds or thousands of people all stating the required obligations, but for the parish council or equivalent to represent the public and propose a reasonable claim to the LPA against the developer. The aim is to ensure the locality remains sustainable.

**Recommendations:**

- a) Planning obligations offered by the developer to be transparent to the local community during the planning process and before determination is made.
- b) Parish councils or equivalent have the authority to make representation to the LPA on reasonable claims to improve services and open spaces to support the growth in population.

**How can the planning system ensure that buildings are beautiful and fit for purpose?**

**Design Standards /Codes**

Professor Matthew Carmon at Bartlett School of Planning, has highlighted that in recent years design standards have dropped. People tend to be less satisfied with new housing. This may in part be down to a lack of clear national space standards over past decades leading to homes that are too small. But also, because we are building neighbourhoods without ready access to basic amenities.

There are common problems included a physical lack of space, difficulties in separating home and work life, poor Wi-Fi, and poor physical conditions, doubtless exacerbated by Covid.

**Recommendation:**

- To consider all aspects that contribute towards sustainability for the residents, site and locality.
- Mandate access to private open space, even if just to a balcony.
- Be built to decent national minimum space standards and have access to fresh air, daylight and good insulation against heat, cold and noise.
- The nationally described space standards should be amended to reflect increasing “working from home” needs.
- Design codes are applicable to ALL developments and conversions, including PiPs.

**What role should modern technology and data play in this?**

**Digital Service**

The aim of digital service is to provide a variety of different parties to collect and share standardised data for the purpose of the production of: local plans; neighbourhood plans; development applications; and PiPs.

It must be capable of holding the required quality, consistent and comprehensive evidence based on the subject to be determined. Full transparency should be assured to all parties who actively participate in the process and those who wish to observe.

**Recommendation:**

Central government has a poor track record of delivering business / IT solutions. I beg that this is undertaken correctly by using recognised change management methodologies and in particular:

- a) Identifying and agreeing the required outcome of the new digital service that is responsive, relevant, efficient, effective, flexible to deliver and provides the commensurate benefits for all parties.

- b) Recognising this is a people solution to share and access information based on their behaviour and working practices that is complaint to quality and comprehensive content. IT is only the enabler.
- c) Investing time up front on explicitly stating the benefits and outcomes and getting stakeholder input and buy-in
- d) Setting up a steering committee of required disciplines with membership from at least the LPAs; local government associations; house builders association (or equivalent) and disciplines of the different statutory consultees.
- e) Setting up a focus group, similar to that of the climate change citizen assembly, who have an active interest in the planning system. Their views to be fed into the steering committee. This will ensure public engagement.
- f) Identifying, understanding and documenting how each party would use the new system based their working practices and behaviour. Digital service is not just a technical solution, but primarily a people solution. The use will vary by different types of users and their needs.
- g) Employing business analysts who understand the English planning system, together with the knowledge of the evidence required to be collected and shared.
- h) Signing off the requirements by steering committee before design and construction takes place.

### **How can the planning system ensure adequate and reasonable protection for areas and buildings of environmental, historical, and architectural importance?**

It is important that all villages and towns should have their conservation area reassessed during the local plan development and / or neighbourhood plan development. These conservation areas will capture a large number of important historical and architectural sites. However, it has to be recognised the list would not complete for the whole parish.

For our county of Kent, our council maintains the Kent Historic Environment Records.

#### **Recommendation:**

- a) Encourage historic villages and towns to have and regularly maintain a conservation area by using recognised tools such as the “conservation area management plan”
- b) Encourage counties that do not have and maintain a record of historic sites to set one up.
- c) Developers to document all places on the recognised records for their site onto relevant supporting planning documents.

### **What changes, if any, are needed to the green belt?**

The NPPF requires stricter definition and protection of the green belt and the government needs to provide greater financial support to Natural England so they can discharge their responsibilities professionally and timely.

It has been reported that Natural England’s finances are in crisis after a decade of cuts. Defra's funding for the agency plummeted from £265m in 2008/09 to a low point of £85.6m in 2019/20. It is believed that an additional £15m has been allocated for this financial year, which is literally a drop in the ocean. If the government is serious about its commitment to the U.N. on biodiversity, the environment and climate change, it has to put turn stern words into hard cash.

#### **Recommendations:**

- a) Redefine what the “green belt” means in reality where development cannot and must not occur without using exception clauses.
- b) Restore Natural England’s finances back to 2008-09 levels.

### **What further steps might also be needed?**

If the select committee wish to discuss with me the evidence above, or my submission on behalf of Tenterden Town Council, , then I would happy to make myself available.

*October 2020*