

## **Planning reforms 2020: changes to the current system**

Just Space briefing 18 September 2020

In August 2020 the government launched two consultations. [Planning for the Future](#) (white paper) will completely replace current rules by 2025. Meanwhile, [Changes to the Current Planning System](#) introduces more short term measures which would have effect from later in 2020.

The white paper consultation has a deadline of 29 October and is the subject of a separate Just Space briefing. This briefing relates only to the changes to the current system, for which the consultation ends on 1<sup>st</sup> October. Individuals and groups are urged to submit their comments to DHCLG by the end of September (with a copy please to Just Space). You can respond by email. Or with an online form. A suggested response is attached at the end of this briefing. Feel free to use any or all of it.

### **In a nutshell: two more massive attacks on ‘affordable’ housing and huge new housing need targets for London.**

Scope: the proposed changes apply only to England. This briefing concentrates on implications for London only.

### **Delivering “First Homes”: making ‘affordable’ housing even less affordable.**

The government is pushing “First Homes” as a new ‘discount market sale’ ‘affordable’ product, with price discounts of at least 30%. Local Planning Authorities (LPAs) could alternatively require 40% or 50% discounts. When homes are re-sold the same discount stays, to avoid the original buyers cashing in windfall gains. The price cap in London is £420k, after a 30% discount, so the full market value ceiling is £600k, around £100k above the average London house price. The consultation didn’t say what proportion of households can afford prices of £300k to £420k without big parental cash transfers.

[Sadiq Khan](#) opposed First Homes in response to the original proposals in spring 2020. According to the GLA, First Homes in London would only be affordable to the richest 2% of households: those with incomes over £76,000, assuming a 30% discount. With 40% off market values 4% of Londoners could afford them. Higher discounts would mean developers reducing other ‘affordable’ tenures. *‘The Policy would only support the very wealthy,’* instead of the government’s claim to be including nurses, teachers, and police officers who typically earn between £25k-£35k. If First Homes had been required in 2018/19 around 20% of new social rent stock would have been lost, partly as a result of reductions in shared ownership which would, in turn, have led to less cross-subsidy from this tenure to low cost rent.

Under revised National Policy (NPPF), First Homes will have to make up *‘a minimum of 25% of all affordable housing’* coming from developers’ contributions. Ministers’ preference is for this new offer to *‘replace as a priority other affordable home-ownership products,’* with the remaining 75% meeting Local Plan tenure splits, to create certainty. But they are considering allowing councils to negotiate with developers. If the second wins out, developers will push for less low cost rent. In London, First Homes would re-target 25% of ‘affordable’ housing at higher income households, because these Discount Market Sales are even less accessible to average earners than shared ownership. Expect some boroughs to require more than 30% off.

### Transitional arrangements

*'Where local authorities choose to update their tenure mix to reflect this policy, they can do this through a local plan review, although we believe that prioritising the replacement of home-ownership tenures by First Homes will reduce the need for this.'* Also, Local Plans submitted for Examination within six months of the new policy being *'enacted will not need to reflect the First Homes policy requirements.'* For current pre-applications, *'the local authority should have flexibility to accept alternative tenure mixes, although they should consider whether First Homes could be easily substituted for another tenure, either at 25% or a lower proportion.'* It isn't clear when First Homes will be required.

### What tenures will First Homes replace? Impacts on shared ownership and housing associations

First Homes should mainly displace other ownership products, 'as a priority,' in theory. That means less shared ownership. Amazingly, the impact on housing associations wasn't mentioned. Developers will sell First Homes direct to buyers, so associations won't be needed as equity sharers. Less shared ownership means less of Housing Associations' highest-revenue 'affordable' tenure, though they could cash in on First Homes themselves by building some in their own schemes as a supplement to full price market sales. HAs and developers will both have incentives to reduce low cost rent as well, to maintain significant proportions of shared ownership. Because First Homes' greater capital receipts makes them more profitable, there's also a danger of inflating land values and/or developers' profits, as happened with Help-to-Buy.

**Build-to-Rent:** schemes are currently exempted from delivering ownership products. Ministers are *'considering how to implement these exemptions with regards to First Homes.'* This is a telling contrast with previous attitudes to the B2R sector. Nobody (except Just Space) even considered adapting the B2R model to incorporate any low cost rent whatsoever.

Like other forms of 'affordable' housing, First Homes would be exempt from Community Infrastructure Levy.

**Summing up,** First Homes would further reduce the scope for local councils to secure council tenancies, or HA homes let at council rents, further tilting government support to favour higher income households. Furthermore (as with Help-to-Buy in recent years) the benefits may be diverted to higher housing and land prices, and thus to developers' and land owners' profits.

### Small site 'affordable exemption' extended from 9 units to 40 or 50

National Planning Policies already discourage LPAs from requiring 'affordable' housing contributions from developments of fewer than ten units, or sites under 0.5 hectares. Soon this would be extended to sites of 40 or 50 homes, as a 'temporary' measure for at least 18 months, portrayed as necessary to support Small and Medium sized (SME) builders and the building industry's recovery from Covid 19. Only 8% of authorities with up to date local plans (less than 5 years old) require affordable housing contributions from 'minor' or 'small' sites. The government estimates that reductions in affordable housing contributions from S106 for the proposed new thresholds would be as follows, in addition to the current losses from the exemption of schemes below 10.

\* **40 units:** between 7%-14%

\* **50 units:** between 10-20%

**Summing up: It would be wholly in line with Just Space evidence submitted to London consultations and inquiries to oppose this policy change completely.**

Consultation responses are sought. Just Space has always opposed exemptions, even for schemes of fewer than 10 dwellings, though accepting that sometimes cash payments towards affordable housing elsewhere may be a necessary alternative in some cases. Just Space strongly opposes this policy change. If an emergency response to Covid 19 is required in housebuilding it is clearly a major switch of priorities to council and HA homes on secure tenancies at low rents.

Ministers admitted potential *'adverse threshold effects whereby developers attempt to bring forward larger sites in phases of up to 40 or 50 homes....to avoid contributions. To minimise the impact'* of this strategy, planning guidance will advise LPAs on how they *'can secure contributions for affordable housing where it is apparent that a larger site is being brought forward.'* These cases may only become apparent after several years, unless some state-sanctioned torture of developers is allowed within appropriate light-touch boundaries.

Supposedly making the change temporary will *'not inflate land prices in the longer term.'* Expect the reverse. The pretext about encouraging more small builders to enter the market doesn't hold up. Preparing schemes and planning applications takes time. That means the main beneficiaries will be companies with well-progressed plans to develop sites under the current system, who will now have to provide zero affordable housing instead of 35%. Initially, land owners' share of extra windfall profits will depend on whether they've already sold their sites, or whether option agreements allow them to demand more.

Eighteen months may allow some small builders to rush in applications before the deadline, so there could be some 'additionality' in terms new market numbers by mid 2022, but landowners will demand a big slice of those super-profits, and there's likely to be a big reduction *after* the deadline, which both interest groups will use to lobby for an extension to the exemption period.

An unstable housing market and high land prices are bigger barriers to SMEs than viability-tested Local Plan policies. Small builders could be supported without affordable exemptions through interest free loans and CIL deferments. Working as contractors for properly funded councils or housing associations could be a massive boost, because it would undeniably increase supply much more, and quicker, without build out schedules being delayed by market absorption rates.

### Could proactive councils avoid the exemption?

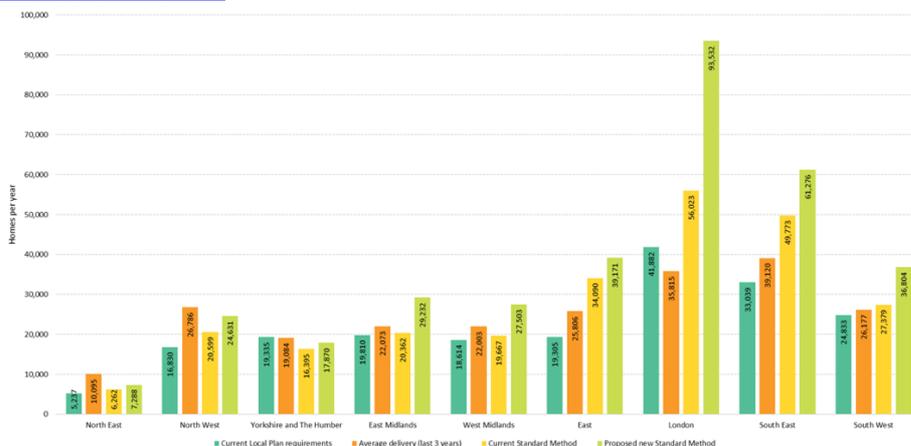
This isn't clear. The implementation *'could be through the introduction of a Written Ministerial Statement in the Autumn.'* Ministerial Statements and the NPPF are only 'material considerations' that Local Planning Authorities have to take into account when drawing up policies. That's why planning inspectors (and ministers) have passed some Local Plans that contradict national guidance on minor sites. (See 2.9). Ministers want these new thresholds obeyed everywhere, immediately. By definition that should override all Local Plans. Primary legislation could do that. Could a Ministerial Statement?

Changes to the Current Planning System proposes two other reforms:

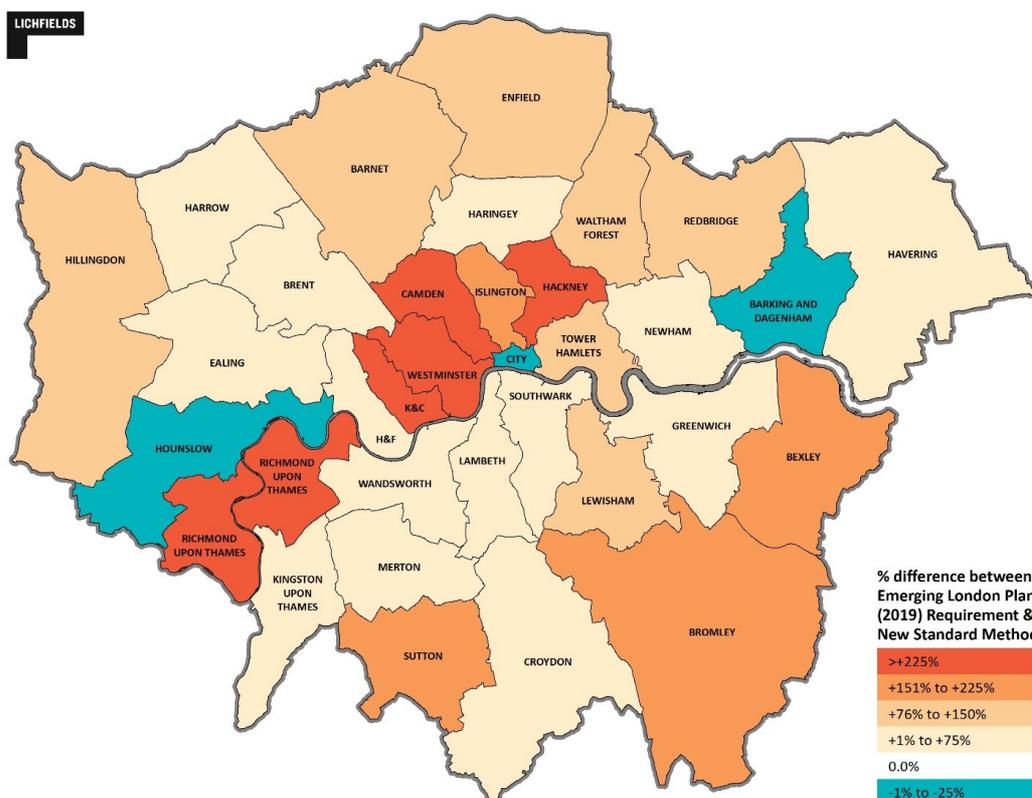
\* **The Standard Method for Assessing Housing Need:** how government calculates the minimum number of homes LPAs should plan for, and ensures they identify enough land and type of developments: densification of brownfield land; regeneration of former commercial sites etc. The proposal is to change the formula which generates the first round of need figures. (The final binding targets which the Ministry would impose on councils would be modifications of these need estimates in the light of constraints (green belts and so on) through a process which is not described.)

The revised formula would have the effect of adding to the targets for many home counties and rural/suburban areas in southern England while reducing the targets for many urban areas. However for London it would generate a target of 93,000 additional dwellings per year – far in excess of the 65,000 dwellings discussed in the London Plan and about three times the actual current level of building. The implications of the proposal have been worked out by Lichfields and we recommend reading their blogs on the subject for all the details. They have kindly let us reproduce this chart and the map of London Borough impacts below.

<https://lichfields.uk/grow-renew-protect-planning-for-the-future/how-many-homes-the-new-standard-method/>



And the impacts for London look dramatic.



However, as the Lichfields blog explains, these new ‘need’ figures would not apply to London Boroughs in the short or medium term because the London Plan is up to date and will be superseded by a brand new one (we assume). However the new figures could have a

bearing on the next London Plan which the Secretary of State wants the Mayor to start doing now, precisely to add more housing. But the new planning system outlined in the White Paper is supposed to be in operation by 2024 complete with new local plans and a new system for nationally-enforced housing requirements. Those requirements are to be based partly on 'need' and partly on considerations of constraints (green belts and other protected land) and land capacity.

**Recommendation:** Just Space has always argued that the policy obsession with unattainable targets for total output is wrong because the pursuit of such numbers brings us so much of the wrong housing: housing not affordable by the Londoners who need it most. But the issue does matter because the imperative for more housing numbers drives so many of the damaging features of the Plan: displacement of existing social housing, displacement of industrial and commercial firms (and the jobs and services they offer in London's diverse local economies) and inflation of land prices. Just Space has argued that, instead, London should focus on protecting its inherited stock of social housing and adding more, since that is where the true need lies – as evidenced by the GLA's own data. The existence of 'needs' estimates on the new basis might worsen the intensification pressures in London, therefore, even in the short term.

Just Space and its member groups would also usually argue that need estimates for housing should be considered at a region-wide level as well as at local scale and it would be valuable if groups submitted evidence about this as well as broad views on the proposed new system.

### **Permission in Principle**

\* **Extension of Permission in Principle:** gives developers clarity that housing-led development is acceptable without having to submit costly planning applications: it is much simpler and cheaper to apply for than outline planning permission. In 2017 PiP could apply to brownfield land. From 2018 it was extended to 'minor' sites of less than 10 units on which applicants could apply for PiP.

The proposal now is to extend this facility for schemes up to 150 dwellings (or 5 ha), i.e. within the limits where Environmental Impact Assessments and Habitats analysis are not required.

Consultation questions relate to whether or not you support this change, what publicity should be required and whether to see the amount of commercial floorspace in PiP schemes unlimited (providing always that housing is a majority of the floorspace). An important question for many London groups is whether the regulations should permit high limits to be specified. Otherwise PiP decisions would be based only on 3 considerations: number of dwellings, appropriateness of housing as a land use and location.

PiP is not an issue on which Just Space has collectively taken a position hitherto. However we have often been very much concerned about the height of housing schemes (mainly on grounds of overshadowing, safety or energy implications) or density relative to social infrastructure capacity, for example play and green space, community centres, education and health. For these reasons Just Space would probably wish to see schemes of 10-150 dwellings go through an outline or full planning permission procedure which would enable such issues to be properly evaluated. (It should be noted that, in most of London, such sites have probably been allocated already in local plans so that the acceptability of development is already established.)

### Comments to guide response

Respond either by an online questionnaire or by email

Both are at <https://www.gov.uk/government/consultations/changes-to-the-current-planning-system>

When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- - your name,
- - your position (if applicable), and
- - the name of organisation (if applicable).

### ***Standard Method of assessing local housing need.***

**Q1: Do you agree that planning practice guidance should be amended to specify that the appropriate baseline for the standard method is *whichever is the higher of the level of 0.5% of housing stock in each local authority area OR the latest household projections averaged over a 10-year period?***

*JS Comment on Q1-5: The entire approach is wrong. New housing should be built where it makes most sense in terms of regional re-balancing, minimising the need to travel by private car & minimising environmental impact.*

*We expect any formula of the kind you propose to be defeated by political horse-trading, however.*

*If there is to be a formula, it would be good to see the end of 5 years land supply which enabled the most NIMBY areas to continue un-challenged. That is welcome.*

*So far as London is concerned, the reluctance of local, regional and national politicians to require Outer London boroughs to densify, has meant that London has not identified the capacity to 'meet its own needs' and no formula is likely to change this. The outcome in recent decades has been a densification of much of Inner London with severe displacement of low- and middle-income communities (especially families), and of SMEs. The solution must lie in re-directing growth elsewhere and/or meeting housing needs at a larger regional planning scale.*

*The formula applied at the scale of London boroughs (as calculated and mapped by Lichfields) tells us a lot about where purchasers are willing to pay a lot (Kensington and so on) but that is not much guide to where housebuilding should be focused, which must derive mainly from capacity. It's also a bad guide to what should be built, which must prioritise low-rent homes which is where the serious backlog of unmet needs is growing (on the GLA's own figures in the SHMA).*

**Q2: In the stock element of the baseline, do you agree that 0.5% of existing stock for the standard method is appropriate? If not, please explain why.**

*Comment: not possible to answer this within London.*

**Q3: Do you agree that using the workplace-based median house price to median earnings ratio from the most recent year for which data is available to adjust the standard method's baseline is appropriate? If not, please explain why.**

*Comment: rental affordability is the key variable for half of Londoners and should be evaluated for lower quartile rather than median.*

**Q4: Do you agree that incorporating an adjustment for the change of affordability over 10 years is a positive way to look at whether affordability has improved? If not, please explain why.**

*Comment: agree. And this would apply for rental affordability too.*

**Q5: Do you agree that affordability is given an appropriate weighting within the standard method? If not, please explain why.**

*Comment: see general comments on 1-5 above.*

**Do you agree that authorities should be planning having regard to their revised standard method need figure, from the publication date of the revised guidance, with the exception of:**

**Q6: Authorities which are already at the second stage of the strategic plan consultation process (Regulation 19), which should be given 6 months to submit their plan to the Planning Inspectorate for examination?**

**Q7: Authorities close to publishing their second stage consultation (Regulation 19), which should be given 3 months from the publication date of the revised guidance to publish their Regulation 19 plan, and a further 6 months to submit their plan to the Planning Inspectorate?**

*JS Comment on 6 & 7: this is not going to work easily for Greater London, given the impending new London Plan and work starting on the next, in which major issues of strategy are up in the air. No comment.*

**If not, please explain why. Are there particular circumstances which need to be catered for?**

### ***First Homes***

**Q8: The Government is proposing policy compliant planning applications will deliver a minimum of 25% of onsite affordable housing as First Homes, and a minimum of 25% of offsite contributions towards First Homes where appropriate. Which do you think is the most appropriate option for the remaining 75% of affordable housing secured through developer contributions? Please provide reasons and / or evidence for your views (if possible):**

1. **Prioritising the replacement of affordable home ownership tenures, and delivering rental tenures in the ratio set out in the local plan policy.**
2. **Negotiation between a local authority and developer.**
3. **Other (please specify)**

*JS Comment: This entire policy is a mistake because (a) it redirects 'affordable' housing effort even further up the income/wealth scale where it is less needed and away from low- and middle-income households whose needs are greatest; and (b) to varying degrees around the country it is likely to inflate house and land prices and the profits of developers and landowners as did Help to Buy.*

*If this policy is introduced it should NOT be at the expense of affordable rental tenures but replace shared ownership which is widely discredited and unpopular. The evidence is overwhelming that social/council rent levels and secure tenancies are the most badly needed forms of housing.*

**With regards to current exemptions from delivery of affordable home ownership products:**

**Q9: Should the existing exemptions from the requirement for affordable home ownership products (e.g. for build to rent) also apply to this First Homes requirement?**

*Comment: Only social rent homes should be exempt from S106 and CIL obligations in our view, on the principle of focussing support where it is most needed and protecting the yield from S106 and CIL.*

**Q10: Are any existing exemptions not required? If not, please set out which exemptions and why.**

*Just Space [argued strongly](#) at the London Plan EiP that Build to Rent should not have exemptions. The treatment of build-to-rent as—in effect—a new use class is a mistake and the planning system should not support it.*

**Q11: Are any other exemptions needed? If so, please provide reasons and /or evidence for your views.**

**Q12: Do you agree with the proposed approach to transitional arrangements set out above?**

**Q13: Do you agree with the proposed approach to different levels of discount?**

*Comment: No. Certainly in London low- and middle-income household would be unable to afford First Homes of adequate size even with the larger discounts. If local authorities required larger discounts it would be at the expense of the numbers of relatively more affordable units and that would be regressive / exclusionary of those in greater need.*

**Q14: Do you agree with the approach of allowing a small proportion of market housing on First Homes exception sites, in order to ensure site viability?**

**Q15: Do you agree with the removal of the site size threshold set out in the National Planning Policy Framework?**

**Q16: Do you agree that the First Homes exception sites policy should not apply in designated rural areas?**

**Q17: Do you agree with the proposed approach to raise the small sites threshold for a time-limited period?**

*Comment: No. Raising the small sites threshold to any extent would have totally unacceptable consequences for the numbers of affordable homes – as the government acknowledges in its consultation paper. From a London perspective, this would be disastrous: already-inadequate output of genuinely affordable homes would be further*

squeezed. This will be a windfall profit for developers at the expense of those needing housing.

**Q18: What is the appropriate level of small sites threshold?**

1. **Up to 40 homes**
2. **Up to 50 homes**
3. **Other (please specify)**

*Comment: Keep it at 10, and retain the freedom for LPAs to have no threshold if their local conditions indicate (as now).*

**Q19: Do you agree with the proposed approach to the site size threshold?**

*Comment: No. See 17*

**Q20: Do you agree with linking the time-limited period to economic recovery and raising the threshold for an initial period of 18 months?**

*Comment: No. See 17*

**Q21: Do you agree with the proposed approach to minimising threshold effects?**

**Q22: Do you agree with the Government's proposed approach to setting thresholds in rural areas?**

**Q23: Are there any other ways in which the Government can support SME builders to deliver new homes during the economic recovery period?**

*Comment: Yes. Government should provide funding to enable LAs to start building programmes from their Housing Revenue Accounts, freed (at least in London and the South) from the Right to Buy, and by boosting funding for community-led housing which tends to use SME builders.*

**Q24: Do you agree that the new Permission in Principle should remove the restriction on major development?**

*Comment: Just Space has never taken a view on this. However it seems likely that most relevant sites (10-150 homes) are already allocated in borough plans so that the principle of development will already have been established.*

*However in London we have many many cases where density or height considerations are critical for schemes in this size range, so we consider that such schemes should go through the Outline Planning Application process which enables these matters to be explored properly. See also density and height below.*

**Q25: Should the new Permission in Principle for major development set any limit on the amount of commercial development (providing housing still occupies the majority of the floorspace of the overall scheme)? Please provide any comments in support of your views.**

*JS Comment: We have pressed hard for workplaces and other non-residential uses to be integrated in housing schemes so we support the removal of the limit (provided that housing remains at least half the floorspace).*

**Q26: Do you agree with our proposal that information requirements for Permission in Principle by application for major development should broadly remain unchanged? If you disagree, what changes would you suggest and why?**

*Comment: see 24.*

**Q27: Should there be an additional height parameter for Permission in Principle? Please provide comments in support of your views.**

*Comment: Yes, a height parameter would be essential in addition to density (floorspace) statements because (i) tall buildings are becoming common now in almost every part of London and the emerging housing need pressures might intensify this trend, (ii) new research evidence is showing that the energy consumption and CO2 emissions increase dramatically with building height and (iii) there are frequent problems with overshadowing of public (and private) space in town centres and transport nodes (iv) heightened awareness of fire safety in tall buildings will mean that schemes need close scrutiny. Including at outline/PiP stage. Communities and LPAs need to regulate height as well as density.*

**Q28: Do you agree that publicity arrangements for Permission in Principle by application should be extended for large developments? If so, should local planning authorities be:**

- i) required to publish a notice in a local newspaper?
- ii) subject to a general requirement to publicise the application or
- iii) both?
- iv) disagree

*Comment: both. Maximum effort is needed to bring these schemes to public attention quickly.*

**If you disagree, please state your reasons.**

**Q29: Do you agree with our proposal for a banded fee structure based on a flat fee per hectare, with a maximum fee cap?**

**Q30: What level of flat fee do you consider appropriate, and why?**

**Q31: Do you agree that any brownfield site that is granted Permission in Principle through the application process should be included in Part 2 of the Brownfield Land Register? If you disagree, please state why.**

**Q32: What guidance would help support applicants and local planning authorities to make decisions about Permission in Principle? Where possible, please set out any areas of guidance you consider are currently lacking and would assist stakeholders.**

**Q33: What costs and benefits do you envisage the proposed [PiP] scheme would cause? Where you have identified drawbacks, how might these be overcome?**

**Q34: To what extent do you consider landowners and developers are likely to use the proposed measure? Please provide evidence where possible.**

### **Public Sector Equality Duty**

§123. The Equality Act 2010 requires public authorities to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. It relates specifically to groups with protected characteristics including age, disability, sex, race, religion or belief, sexual orientation, gender reassignment, pregnancy, and maternity.

**Q35: In light of the proposals set out in this consultation, are there any direct or indirect impacts in terms of eliminating unlawful discrimination, advancing equality of opportunity and fostering good relations on people who share characteristics protected under the Public Sector Equality Duty?**

**If so, please specify the proposal and explain the impact. If there is an impact – are there any actions which the department could take to mitigate that impact?**

*Comment: We consider that the Public Sector Equality Duty should have led the government to undertake research, specific consultations and analysis before issuing these proposals.*

*We consider that the government should do so now. It is quite wrong (evasive and lazy) to rely on contributions from respondents to discharge this duty.*

*The main issue which is obvious here is that the First Homes proposal and the proposal to raise the threshold above which affordable housing obligations arise would both reduce the output of the kinds of homes which are most affordable and most needed by low- and medium-income Londoners and those without personal or family wealth.*

*We know from a massive research literature that inadequate supply of secure homes which they can afford from earnings or social security incomes bears disproportionately on working class people at large and on many protected groups: on individuals in many ethnic minority groups, on single-parent households (mainly women) and on people with many disabilities.*

*We would have expected something at least as good as the report produced at speed by the Mayor of London when required to do so by the Panel at the London Plan EiP last year at our request: **Summary of the specific implications of the Plan for each of the 9 groups with protected characteristics**, April 2019*  
[https://www.london.gov.uk/sites/default/files/nlp\\_ex\\_33c\\_appendix\\_3\\_summary\\_.pdf](https://www.london.gov.uk/sites/default/files/nlp_ex_33c_appendix_3_summary_.pdf)

*Mitigation would require the cancellation of both these policy changes.*