1. Summary

1.1 This report outlines changes to the local planning system and a potential consultation response. The aim of the central government proposals is to promote residential development of ‘brownfield’ land.

2. RECOMMENDATION:

2.1 That Cabinet agrees a response to the consultation, as detailed in the Appendix to the report.

3. Background – Local Development Orders (LDOs)

3.1 The government is proposing further changes to the planning system. The aim of the central government proposals is to promote residential development of ‘brownfield’ land. This is planned through new mandatory obligations on Local Planning Authorities to produce ‘Local Development Orders’ (LDOs) for previously developed (brownfield) land.

3.2 The national consultation period ends 11 March 2015. Primary legislation would ultimately be required for the proposals to be introduced.

3.3 On 11 September 2014 Cabinet considered a proposed LDO for selected land at Castle Hill, Eastern Quarry, Ebbsfleet. This is the first LDO in Dartford and the first in the country promoting residential development.

3.4 The September Report explained: “An LDO grants planning permission for the type of development specified in the Order, and by doing so, removes the need for a planning application to be made... LDO’s were introduced as a way of encouraging development by removing the time and cost implications of submitting a planning application. They give certainty to developers that the form of development specified in an LDO can proceed without the risk of refusal or time delays in submitting a planning application and can, therefore, provide an incentive for development.”

3.5 The Report also set out that an LDO would still be subject to public consultation. LDOs set out parameters for development permitted, as well as conditions to be addressed, similar to that for a standard planning application. When a development proposal is submitted, the Local Planning Authority would be responsible for confirming whether the proposal is within the scope of the Order.
3.6 The Castle Hill, Eastern Quarry LDO Report is framed within the context of outline planning permission having already been granted by Dartford Borough Council i.e. the principle of development was already agreed, and the role of the LDO was in relation to considerations only relevant to the Reserved Matters application. The considerations were not, therefore, as significant as would be the case if there was no outline permission.

4. The Proposed Mandatory Regime

4.1 The essence of the proposals is that those Local Planning Authorities that fail to demonstrate they are deploying LDOs to bring forward housing on a sufficient number of brownfield sites will face losing their ability to take local decisions on planning applications.

4.2 In order to allow the coverage of local brownfield land by LDOs to be assessed, the government is stipulating a new requirement to provide regular updates of research on brownfield land availability. This would need to include within a specified format all brownfield sites capable of supporting five or more new homes “available for development and not subject to severe physical, environmental or policy constraints incapable of being viably mitigated”.

4.3 The penalty for ‘failing’ councils is expected to be that developers would be able to apply for any planning permission centrally (Planning Inspectorate decisions). This is as per the special measures regime currently enforced for Authorities deemed to be the lowest performing at dealing with planning applications in a timely manner.

4.4 The government has also included in the consultation the alternative sanction that the Local Planning Authority “would be unable to claim the existence” of the pivotal five year land supply i.e. housing policy could be considered out of date and the Local Plan put aside under current national policy.

4.5 It is proposed to introduce sanctions in 2017, depending on performance next year (2016) against an “intermediate objective”. Ultimately LDOs would be required to be in place for 90% of qualifying brownfield land.

5. Matters Arising in the Borough and Consultation Response

5.1 In Dartford’s situation some specific issues arise. For instance, the hard decisions and work undertaken to bring forward major brownfield development now would not be recognised in the arbitrary national targets applicable in future. There is the issue of ‘fairness’ given efforts already made and a ‘one size fits all’ approach: punitive measures are proposed irrespective of whether an authority has already prioritised brownfield sites, has an up-to-date development plan and a five year housing land supply. There is real concern over the imposition of additional housing sites over and above those proposed through the
Core Strategy: being forced to effectively allow residential development on remaining brownfield sites in the Borough would rely on secondary quality/locations for housing development. The cumulative impacts of this additional development on infrastructure is not considered.

5.2 The consultation does not make reference to brownfield sites in the Green Belt and whether these would be exempted from the LDO proposals. The government’s stated purpose of Green Belt is to maintain openness, and the proposed provisions have the potential to undermine this policy. The consultation is insufficiently clear on the approach to Green Belt sites. Confirmation that the proposals will not apply to Green Belt sites would be helpful.

5.3 Moreover, it is considered that the proposed sanctions are potentially draconian, and the principle of the scheme runs contrary to local democracy by moving away from the determination of applications by the Local Planning Authority. It also undermines the Local Plan – housing locations would no longer be primarily determined through the Local Plan but by an arbitrary process which is undertaken in isolation and is not capable of considering cumulative development impacts or co-ordinating development requirements.

5.4 A range of specific questions and potential problems arise from the consultation document and questions, as documented in the response drafted (see Appendix).

5.5 Objections over housing occurring in unsuitable locations, including the green belt, form the basis of the proposed response to consultation question 1.

5.6 Concern is raised over the resource implications of both the need to produce additional research on sites, landowner attitudes and developer interest, and to formulate sufficient appropriate LDOs. This would be an ongoing cross-departmental endeavour. The additional burden on local authorities of undertaking the preparation of LDOs is significant, effectively transferring the pre-application preparation work from the private sector to local authorities. This is not recognised in the consultation.

5.7 The government is at present intending to support a limited number of bids for funding, and support is only available for sites producing 100 dwellings or more (but Dartford has already focused closely on sites of this size). This will not address the ongoing effort required in the long term.

5.8 Accordingly, concerns are made (consultation questions 2 to 4, and 7 to 8) over the regime as currently proposed and its practical impact in diverting resources, for example away from the challenge of successfully preparing a sound, up to date, Local Plan or from other areas of local authority work.
5.9 There is objection to consultation question 5’s suggestion of designating underperforming authorities as an effective measure against arbitrary national proportions of brownfield land with PDL in place. The approach is disproportionate and undermines locally plan-led development (questions 9 to 11).

5.10 Cabinet is aware that until September last year, no LDOs for residential development existed anywhere. They are untested for permitting the use of land for housing. There are concerns that in the absence of solid evidence of general development industry clamour for LDOs, that the regime may prove ineffective in bringing forward extra supply in areas that have already identified significant land for housing. In these circumstances, site identification through LDOs is likely to displace development of sites identified through the Local Plan rather than generate additional housing.

5.11 Moreover, with the regime hinging on a nominal proportion of identified brownfield land gaining LDO coverage - a requirement proposed at a very high level, 90% - an inflexible system is created. It does not encourage Local Planning Authorities to actively prioritise and positively promote suitable brownfield sites.

5.12 Therefore consultation responses to questions 6 and 12 raise issues over the effectiveness of the regime in securing housing development at sustainable brownfield sites.

6. Conclusion and Summary Concerns

6.1 Dartford Council is the first local authority in the country to have adopted a residential LDO. The merits of producing an LDO in certain circumstances in order to provide certainty and reduce the cost and time implications for the private sector of submitting a planning application are recognised. However, the blanket approach proposed does not appear to have taken differing local circumstances into account. As a consequence, the proposals may not always achieve the desired outcomes and there may be unintended consequences.

6.2 The objective of increasing national housing delivery on brownfield land is supported. Nevertheless, this is a radical proposed change which appears to run counter to the national policy of identifying housing land through the democratic process of a Local Plan and co-ordinating the resulting infrastructure requirements. It is considered that there are better ways to achieve the stated objective which are consistent with the national planning policy framework, and which do not take away from the role of developers by forcibly passing tasks on to Local Planning Authorities.

6.3 The proposals can be described as all 'stick' and no 'carrot'. It increases central government power at the expense of local decision taking, and it
also creates new demands on resources, with apparently no recompense. Options such an enhanced New Homes Bonus element for brownfield delivery, rewarding the adoption of an up-to-date Local Plan, local targets for the use of brownfield land and having a five year housing land supply should all be considered.

6.4 Dartford is successfully encouraging efficient re-use of vacant previously developed sites, overcoming obstacles such as the impact of costs (contaminated land clear-up) compared to greenfield sites, and the challenges of providing infrastructure for new communities. This has occurred through sites identified in the Core Strategy, the setting of an ambitious brownfield target of 80% of new housing development and the positive approach to brownfield land set out in documents such as the Housing Windfalls SPD.

6.5 It is recognised that brownfield land in some regions has often not attracted development proposals. This may relate to the cost issues identified in the paragraph above (especially where the housing market is less attractive to developers) or simply the undesirable location of available brownfield land, which can be close to inappropriate adjoining uses or remote from jobs, services and transport links.

6.6 The proposals are not supported by solid evidence and may not prove effective. From Dartford’s experience, benefits to all parties may be limited or non-existent, whilst the outcomes of introducing development sites not supported in Local Plans are likely to be severe.

6.7 There is fundamental concern over compulsory permissions for development at remaining brownfield land in the Borough. These extra housing sites are likely to be poorly served by infrastructure and in unsuitable locations. As a minimum, if the regime is introduced, green belt sites must be exempted.

7. Relationship to the Corporate Plan

7.1 New housing relates to the following Strategic Aims from the Dartford Corporate Plan, including:
To Ensure that Regeneration in Dartford is Sustainable and of Benefit to all our Communities
To Facilitate Quality, Choice and Diversity in the Housing Market and to Create Strong and Self Reliant Communities
To Promote an Environment which is Attractive, Adapted to Climate Change and which Provides a Realistic Choice of Travel Options

8. Financial, legal, staffing and other administrative implications and risk assessments:

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5 MARCH 2015

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9. Details of Exempt Information Category

Not applicable

10. Appendices

Appendix A - Proposed Response

BACKGROUND PAPERS

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<th>Section and Directorate</th>
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<td>DCLG (Jan. 2015) 'Building More Homes on Brownfield Land'</td>
<td>Mark Aplin (01322) 343202</td>
<td>Regeneration Services, Strategic Directorate (External Services)</td>
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