



Department for  
Communities and  
Local Government

# Further changes to statutory consultee arrangements for the planning application process

Consultation



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# The scope of the consultation

|                                    |   |
|------------------------------------|---|
| <b>Topic of this consultation:</b> | <p><b>Measures aimed at ensuring more effective provision of advice to local planning authorities in relation to surface water drainage management.</b></p> <p><b>Part A: proposal to introduce the Lead Local Flood Authority as a statutory consultee on major planning applications with surface water drainage implications to ensure technical advice is available to local planning authorities.</b></p> <p><b>Part B: proposal to change the thresholds for the Environment Agency's statutory consultee involvement in a planning application to achieve a more proportionate approach in light of changing responsibilities.</b></p> <p><b>Part C: whether to make water companies statutory consultees in respect to planning applications for shale oil and gas development.</b></p> |
| <b>Scope of this consultation:</b> | This consultation seeks responses to both detailed proposals, as well as open ended questions.  |
| <b>Geographical scope:</b>         | England   |
| <b>Impact Assessment:</b>          | A summary of the impacts and benefits can be found in the consultation paper.   |

# Basic Information

|  |   |
|--|---|
| <b>To:</b>   | Anyone with an interest in the planning application process.  |
| <b>Body/bodies responsible for the consultation:</b> | Department for Communities and Local Government<br>Planning Application Process Team  |
| <b>Duration:</b>                                     | 18 December 2014 to 29 January 2015   |
| <b>Enquiries:</b>                                    | For enquiries please contact:<br><a href="mailto:planning.applications@communities.gsi.gov.uk">planning.applications@communities.gsi.gov.uk</a>   |
| <b>How to respond:</b>                               | <p>You can either respond to the consultation using the online Survey Monkey form at: <a href="https://www.surveymonkey.com/s/7NNZ9XJ">https://www.surveymonkey.com/s/7NNZ9XJ</a></p> <ul style="list-style-type: none"> <li>• Or you can email your response to the questions to <a href="mailto:planning.applications@communities.gsi.gov.uk">planning.applications@communities.gsi.gov.uk</a></li> <li>• If you need to provide a written response, please make it clear which questions you are responding to. <ul style="list-style-type: none"> <li>• Written responses should be sent to:<br/>Planning Application Process Team<br/>Department for Communities and Local Government<br/>Third Floor<br/>Fry Building<br/>2 Marsham Street<br/>SW1P 4DF</li> </ul> </li> </ul> <p>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:</p> <ul style="list-style-type: none"> <li>• your name,</li> <li>• your position (if applicable),</li> <li>• the name of organisation (if applicable),</li> <li>• an address (including post code),</li> </ul> <p>an email address, and a contact telephone number</p> |

# Introduction

1. In September 2014 the Government consulted on Delivering Sustainable Drainage Systems through changes to the planning system. We received over four hundred responses to the consultation and the Government's response was published on 18 December 2014.
2. On the same day, the Government announced that we would be strengthening the planning system to expect the installation of sustainable drainage systems for major development<sup>1</sup>. In addition local planning authorities are expected to ensure that arrangements are put in place for the ongoing maintenance of sustainable drainage systems.
3. The responses to the consultation highlighted the importance of ensuring that access to technical expertise is available, if local planning authorities are to play a greater role in determining sustainable drainage proposals. It was widely considered that Lead Local Flood Authorities, as local level experts on surface water drainage, were best placed to provide technical advice on developments which propose sustainable drainage systems.
4. In response to the consultation, the Government noted the views raised and said that a subsequent consultation would be launched on an option to make Lead Local Flood Authorities a statutory consultee for major planning applications with surface water drainage implications.
5. The Flood and Water Management Act 2010 assigned the responsibility for local flood risk including flood risk from surface water to Lead Local Flood Authorities in upper tier authorities (county and unitary councils). The role of the Lead Local Flood Authority includes assessing the risk of surface water flooding across its boundaries as well as working with organisations responsible for water management across the authority, so that resources can be more effectively brought together to reduce the likelihood of flooding, and coordinate when it does happen. The Environment Agency is responsible for taking a strategic overview of the management of all sources of flooding and coastal erosion.
6. In light of these changes in responsibility and the proposed increased involvement for Lead Local Flood Authorities in planning applications, we are also consulting on a change to the Environment Agency's statutory consultation arrangements to ensure that local planning authorities have access to appropriate technical advice.
7. The Government is taking steps to ensure that the UK leads the way with shale oil and gas regulation. Reflecting this we are seeking views on whether to make water companies statutory consultees in respect to planning applications for shale oil and gas development.

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<sup>1</sup> As set out in Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010

# Background

## What are statutory consultees?

8. Statutory consultees are those organisations and bodies, defined by statute, which local planning authorities are legally required to consult before reaching a decision on relevant planning applications.
9. It is important to recognise that statutory consultees are not the only organisations that local planning authorities engage with in reaching decisions on planning applications. Local planning authorities will consider whether there are planning policy reasons (national or local) to engage other 'non-statutory consultees', which although not designated in law, are likely to have an interest in a proposed development. For example, a local planning authority may consult with a local wildlife trust on applications in proximity to local wildlife sites. Similarly, there is nothing to stop an organisation such as the Environment Agency from commenting on a planning application for which it is not a statutory consultee.
10. Unlike non-statutory bodies, statutory consultees are expected to provide a substantive response to planning applications<sup>2</sup> on which they are consulted within 21 days. They are also required to report to the Secretary of State annually on their performance in relation to this.
11. The Government has undertaken a package of wider measures to improve the quality and timeliness of engagement by statutory consultees within the planning application process. The recent Technical Consultation on Planning, which ran from 31 July to 26 September 2014, we consulted on amending the statutory consultation requirements on the Highways Agency, Natural England and English Heritage to ensure they are able to make the most effective use of their resources. The proposals to change the role of the Environment Agency should be considered in this context.

## Legal Context

12. Article 16 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 ("**the Development Management Procedure Order**") requires that local planning authorities must consult certain organisations (statutory consultees) before granting of planning permission. Schedule 5 to the Development Management Procedure Order specifies which statutory consultees local planning authorities must consult, depending on the type, location and scale of the development proposed. Under article 20 of the Development Management Procedure Order, statutory consultees are expected to provide the consultor with a substantive response within 21 days. Article 21 of the Development Management Procedure Order requires statutory consultees to report annually to the Secretary of State on their performance with regard to their duty to respond to

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<sup>2</sup> This duty does not apply to applications for listed building consent or applications that are subject to environmental impact assessment. The statutory duty allows the 21 day period to be varied if the consultor and consultee agree in writing.

consultations. Any changes to the statutory consultation requirements in Schedule 5 to the Development Management Procedure Order would also apply to applications submitted directly to the Secretary of State under section 62A of the Town and Country and Planning Act 1990. The consultation requirements for the Environment Agency are set out in Schedule 5 to the Development Management Procedure Order.



# Increased Role for Lead Local Flood Authorities

13. In 2010 Lead Local Flood Authorities were given overall responsibility for local flood risk management under the Flood and Water Management Act 2010. This means they are responsible for managing local sources of flooding from surface water, groundwater and small (“ordinary”) watercourses. In relation to local flood risk, the Environment Agency has a strategic overview role, in addition to its operational responsibility for managing the risk of flooding from main rivers, reservoirs, estuaries and the sea.
14. In December 2014 the Government announced that it would be amending national planning policy to expect the installation of sustainable drainage systems for all major development where appropriate. This followed a consultation on Delivering Sustainable Drainage Systems between 12 September and 24 October 2014. In response to that consultation, it was noted that local planning authorities would require access to the technical expertise required to assess the surface water drainage proposals as part of planning applications. The Government also noted views expressed that this advice should be provided by a consistent and guaranteed source of advice, and that the Lead Local Flood Authorities were best placed to do this.
15. To ensure that advice is provided to local planning authorities within an adequate timeframe to allow them to meet the statutory timeframes in which they have to determine planning applications, we propose to make Lead Local Flood Authorities a statutory consultee on development in relation to surface water drainage. As a statutory consultee, the Lead Local Flood Authority would be expected to respond to the local planning authority within 21 days and under a duty to report to Government on their performance in providing a substantive response within that deadline.

## Question 1

**Do you agree with the proposal to make Lead Local Flood Authorities a statutory consultee on planning applications in relation to surface water drainage, subject to appropriate funding being available?**

16. To avoid unnecessary over-consultation of the Lead Local Flood Authority it is important to focus their statutory consultation role on development where local planning authorities will require expert advice to determine the application. We therefore propose to limit statutory consultation of the Lead Local Flood Authority to major<sup>3</sup> development in relation to surface water drainage.
17. The existing National Planning Policy Framework policy, to prioritise sustainable drainage systems, will remain in place and apply to other development in areas at risk of flooding. Local planning authorities may find it helpful to agree with Lead Local Flood Authorities the circumstances and locations where Lead Local Flood Authority advice should be sought

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<sup>3</sup> As set out in Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010

about a planning application which raises surface water or other local flood risk issues on a non-statutory basis.

18. The risk of over-consultation could also be managed locally by the Lead Local Flood Authority informing the local planning authority that it does not wish to be consulted in certain instances or providing standing advice under powers in Article 16 of the Development Management Procedure Order 2010.

**Question 2**

**If Lead Local Flood Authorities were to be made a statutory consultee on development in relation to surface water drainage, do you agree that this should be limited to major development?**

19. Under the Flood and Water Management Act 2010 Lead Local Flood Authorities are responsible for managing local flood risk from surface water, groundwater and ordinary watercourses. In this role they are required to develop, maintain, apply and monitor a Local Flood Risk Management Strategy. Our planning guidance explains that local planning authorities should ensure local plan policies are compatible with the Local Flood Risk Management Strategy. The guidance also suggests that local planning authorities and Lead Local Flood Authorities should agree the circumstances and locations where Lead Local Flood Authority advice should be sought on a planning application for developments which raises surface water or other local flood risk issues.
20. Given the important role that Lead Local Flood Authorities can play, we are also interested in whether there are other instances where a statutory consultation requirement could be used to ensure that appropriate technical advice is available.

**Question 3**

**Do you think that there is a case for Lead Local Flood Authorities to be a statutory consultee on the following issues? If so, do you think this consultation requirement should apply to developments of a certain size, and/or in certain risk locations?**

- a) development with groundwater management implications?
- b) development in proximity to ordinary watercourses?
- c) any other local flood risk issues?

# Improved Arrangements for Consulting the Environment Agency

21. The Environment Agency is currently consulted on a wide variety of planning applications, reflecting its strategic, operational and regulatory responsibilities for flood risk, water quality, water resources, waste management and controls on certain chemicals.
22. The Environment Agency does not only influence the development process through consultation on individual planning applications. Reflecting its wider strategic responsibility for delivering sustainable development, the Environment Agency is also a:
- Specific consultation body in the preparation of local plans – which provide the basis for decisions on individual applications
  - Statutory consultee for proposed developments that are subject to Environmental Impact Assessment – typically the schemes with greatest potential for adverse impact on the environment
  - Statutory consultee on Development Consent Orders for nationally significant infrastructure projects.
23. Having considered the existing requirements for statutory consultation in the Development Management Procedure Order, and the proposals outlined elsewhere in the consultation on providing an increased role for the Lead Local Flood Authority, we have identified a number of instances where consultation could be unnecessary and/or improved. **These are set out in Table 1.**
24. The proposals in Table 1 would not affect the Environment Agency’s status as a consultee in relation to local plans, Environmental Impact Assessments or nationally significant infrastructure projects. Nor would they alter the current requirement to consult the Environment Agency on applications for relevant developments:
- In an area within flood zone 2 or flood zone 3 (under paragraph (ze)(i) of Schedule 5 to the Development Management Procedure Order);
  - In an area within flood zone 1 identified as having critical drainage problems (under paragraph (ze)(ii) of Schedule 5 to the Development Management Procedure Order);
  - In the bed of, or within 20 metres of the top bank of, a main river which has been notified to the local planning authority by the Environment Agency (under paragraph (q)(i) of Schedule 5 to the Development Management Procedure Order).

**Table 1: Proposed changes to the requirements for consulting the Environment Agency before the grant of planning permission, under Schedule 5 to the Development Management Procedure Order**

| Paragraph | Description of development on which Environment Agency is consulted. | Proposal |
|-----------|--|----------|
|           |  |          |

**Table 1: Proposed changes to the requirements for consulting the Environment Agency before the grant of planning permission, under Schedule 5 to the Development Management Procedure Order**

| Paragraph | Description of development on which Environment Agency is consulted.  | Proposal   |
|-----------|---|--|
| (q)(ii)   | Development involving the culverting or control of flow of any river or stream  | Remove<br>(see note 1.1)   |
| (r)       | Development for the purpose of refining or storing mineral oils and their derivatives   | Remove<br>(see note 1.2)   |
| (s)       | Development involving the use of land for the deposit of refuse or waste  | Remove<br>(see note 1.3)   |
| (t)       | Development relating to the retention, treatment or disposal of sewage, trade-waste, slurry or sludge (other than the laying of sewers, the construction of pumphouses in a line of sewers, the construction of septic tanks and cesspools serving single dwellinghouses or single caravans or single buildings in which not more than 10 people will normally reside, work or congregate, and works ancillary to those matters). | Change to:<br>Major development <sup>4</sup> which does not use the sewerage services of a relevant undertaker appointed under section 6 of the Water Industry Act 1991.<br><br>(see note 1.4)<br><br>For these purposes 'sewerage services' has the meaning given in section 219 of the Water industry Act 1991: " <i>sewerage services</i> " includes the disposal of sewerage and any other service which are required to be provided by a sewerage undertaker for the purpose of carrying out its functions. |
| (u)       | Development relating to the use of land as a cemetery   | Remove<br>(see note 1.5)   |
| (y)       | Development within 250 metres of land which –<br>(i) is or has, at any time in the 30 years before  | Remove<br>(see note 1.6)   |

<sup>4</sup> As defined in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2010

**Table 1: Proposed changes to the requirements for consulting the Environment Agency before the grant of planning permission, under Schedule 5 to the Development Management Procedure Order**

| Paragraph | Description of development on which Environment Agency is consulted.  | Proposal                     |
|-----------|---|------------------------------|
|           | the relevant application, been used for the deposit of refuse or waste; and<br><br>(ii) has been notified to the local planning authority by the Environment Agency for the purposes of this provision. |                              |
| (z)       | Development for the purposes of fish farming  | Remove<br><br>(see note 1.7) |
| (zf)      | Any development of land of 1 hectare or more  | Remove<br><br>(see note 1.8) |

### Explanation of proposed changes in Table 1

25. **Note 1.1 (q)(ii).** Following some changes made by the Flood and Water Management Act 2010, Internal Drainage Boards are responsible for the Flood Defence Consents and management of flooding from ordinary watercourses in their districts, and Lead Local Flood Authorities<sup>5</sup> hold these responsibilities outside of Internal Drainage Board districts. Lead Local Flood Authorities and Internal Drainage Boards are now best placed to provide advice to local planning authorities for this type of development. It is considered that the provision of advice would best be established through local arrangements. The Environment Agency will continue to be consulted on the culverting or control of flow within a main river under paragraph (q)(i) of Schedule 5.
26. **Note 1.2 (r).** The types of development that are likely to have significant impacts on the environment and therefore require consultation with the Environment Agency are identified in Schedules 1 and 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The Environment Agency will retain its role as a statutory consultee for developments that are subject to Environmental Impact Assessment. Local planning authorities would continue to have regard to the Environment Agency's advice on the Environment Impact Assessment Scoping Report and Environmental Statement. It is therefore considered disproportionate to retain this statutory consultation requirement.
27. **Note 1.3 (s).** The types of development that are likely to have significant impacts on the environment and therefore require consultation with the Environment Agency are identified in Schedules 1 and 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The Environment Agency will retain its role as a statutory consultee for developments that are subject to Environmental Impact Assessment. Local planning authorities would continue to have regard to the Environment Agency's advice on the Environment Impact Assessment Scoping Report and Environmental Statement.

<sup>5</sup> Lead local flood authorities are unitary authorities and, in the case of two-tier authorities, county councils.

Furthermore, the Environment Agency has wider responsibility for permitting landfill and incinerator sites, ensuring that environmental risks are adequately managed.

28. **Note 1.4 (t).** The current requirement covers a wide range of potentially polluting activities, the majority of which are regulated through other legislation and need not be duplicated in the planning regime. Larger scale activities with the potential to generate trades wastes, slurry or sludge are covered in the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, on which the Environment Agency would continue to be consulted. However, if category (t) was removed entirely, the Environment Agency would no longer be consulted on major developments that involve private treatment, the proliferation of which can pollute controlled waters, particularly in areas of inadequate sewerage infrastructure. The intention is for the Environment Agency to continue to be consulted on this subset of major developments which are covered by the existing category.
29. **Note 1.5 (u).** Although cemeteries have the potential to pollute surface water and groundwater, the advice which the Environment Agency typically gives to local planning authorities on such developments is of a generic nature. It is not considered necessary for this to be provided on a case-by-case basis through statutory consultation. To protect groundwater, site-specific investigation needs to be undertaken by the applicant to determine the highest groundwater table and then set the base of the burial pits sufficiently high enough above this. Rather than offering such advice through statutory consultation on individual applications, this could take the form of standardised advice which will be produced in 2014/15. The advice could indicate areas that should be avoided where there is a greater likelihood of pollution of drinking water sources and any additional information that is needed with planning applications.
30. **Note 1.6 (y).** Under the Historic Landfill Project, data on older sites which are no longer licensed by the Environment Agency has been returned to local authorities. As such, we consider that this consultation requirement can be removed. Proposed developments on former landfills should be informed by the Government's planning practice guidance on land contamination and site investigations undertaken as part of the redevelopment.
31. **Note 1.7 (z).** The operation of fish farms is regulated by legislation outside of the planning system. There is a role for planning in considering whether flooding could result in the accidental or illegal release of fish from a proposed development. The Environment Agency would continue to be consulted on developments in areas identified as having the highest risk of flooding from rivers and the sea under paragraph (ze) of Schedule 5 to the Development Management Procedure Order. Furthermore, large scale intensive fish farms are listed under Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, on which the Environment Agency would continue to be consulted. It is not considered necessary to have a separate fish farm consultation category in the Development Management Procedure Order.
32. **Note 1.8 (zf).** While the Environment Agency continues to have strategic responsibility for flood risk from rivers and seas in England, responsibility for managing local sources of flooding from surface water, ground water and small ("ordinary") watercourses has been assigned to Lead Local Flood Authorities. This follows the Flood and Water Management Act 2010 which clarified previously ambiguous responsibility for flood risk management of local sources of flooding. Lead Local Flood Authorities are therefore better placed to offer advice on surface water and other local flood issues which may be of concern for proposed developments of 1 hectare or more. New national surface water flood maps published in

December 2013 and the National Planning Policy Framework's requirement for site specific flood risk assessment for sites over 1 hectare provide local planning authorities with further evidence on surface water flood risks.

33. The Environment Agency will retain its statutory consultation role on the preparation of local plans and continue to advise local planning authorities, with the aim of ensuring plans contain robust policies to prevent inappropriate development in areas of flood risk (regardless of the source of flooding). Under paragraph (ze) of Schedule 5 to the Development Management Procedure Order, the Environment Agency would continue to be consulted on proposed developments in flood zones 2 and 3, where the risks from sea and river flooding are greatest, as well as areas with critical drainage problems in flood zone 1 where the Environment Agency has notified the local planning authority.

**Question 4**

**Do you agree with the proposed changes as set out in Table 1:**

- a) to remove paragraph q(ii)?**
- b) to remove paragraph r?**
- c) to remove paragraph s?**
- d) to amend paragraph t?**
- e) to remove paragraph u?**
- f) to remove paragraph y?**
- g) to remove paragraph z?**
- h) to remove paragraph zf?**

## Increased Role for Water Companies

34. The Government is taking steps to ensure that the UK leads the way with shale oil and gas regulation. Shale oil and gas could increase the UK's energy security, support thousands of jobs, reduce carbon emissions, and generate substantial tax revenue. In line with this, as parts of the process of shale oil and gas extraction rely upon water, we are testing whether to make water companies<sup>6</sup> statutory consultees in respect to planning applications for shale oil and gas development in their areas.
35. The regulatory framework already has safeguards in place to ensure that issues relating to water are addressed in a robust, joined-up way. The environmental regulator is required to check the potential impact on groundwater in terms of any shale oil and gas proposal, and will not grant a permit where groundwater and drinking water supplies could be affected. Anyone seeking to use or supply the volumes of water involved in such schemes requires an abstraction licence from the environmental regulator, which sets the maximum amount of water that can be used. In granting these licences the regulator checks that the implications for water resources are acceptable.
36. Water companies are not currently statutory consultees for planning applications. They are a consultation body on each mineral planning authority's Local Plan, which sets out the authority's approach to different types of mineral development, including energy minerals like shale. We wish to test whether including water companies as statutory consultees in respect to shale oil and gas development in their areas will further strengthen the regulatory framework and help to ensure that their views are taken into account in the decisions of mineral planning authorities.

### **Question 5**

**Do you have views on whether water companies should be made statutory consultees in respect to shale oil and gas development?**

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<sup>6</sup> This refers to the private companies that provide water services. Currently, there are 32 companies that provide these services. See <http://ofwat.gov.uk/industryoverview/today/watercompanies>



# Consultation questions

## Question 1

Do you agree with the proposal to make Lead Local Flood Authorities a statutory consultee on planning applications involving surface water drainage implications, subject to appropriate funding being available?

## Question 2

If Lead Local Flood Authorities were to be made a statutory consultee on development with surface water drainage implications, do you agree that this should be limited to major development?

## Question 3

Do you think that there is a case for Lead Local Flood Authorities to be a statutory consultee on the following issues? If so, do you think this consultation requirement should apply to developments of a certain size, and/or in certain risk locations?

- a) development with groundwater management implications?
- b) development in proximity to ordinary watercourses?
- c) any other local flood risk issues?

## Question 4

Do you agree with the proposed changes as set out in Table 1:

- a) to remove paragraph q(ii)?
- b) to remove paragraph r?
- c) to remove paragraph s?
- d) to amend paragraph t?
- e) to remove paragraph u?
- f) to remove paragraph y?
- g) to remove paragraph z?
- h) to remove paragraph zf?

## Question 5

Do you have views on whether water companies should be made statutory consultees in respect to shale oil and gas development?

**The closing date for responses is 29 January 2015.**

# About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups who wish to respond are asked to include a summary of the people and organisations they represent and, where relevant, of any other party they have consulted in reaching their conclusions.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your information technology system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not, or if you have other observations about how we can improve the process, please contact:

Department for Communities and Local Government Consultation Co-ordinator.  
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