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Date: 5/10/2018

Dear Maria Miller MP,

**Subject: Update for Women and Equalities Select Committee on Equality and Human Rights Commission work on housing for disabled people.**

This letter details the follow up work on planning and building standards, the Equality and Human Rights Commission has undertaken as part of our formal [inquiry](#) into the provision of adaptable and accessible Housing for Disabled People. In addition it responds to the Women and Equalities Select Committee inquiry on Disability and the Built Environment recommendation that we formally investigate Planning Inspectorate compliance with the Equality Act 2010.

**Overview and timeline**

This year, the Commission has regularly engaged with both the Planning Inspectorate and its sponsor department, the Ministry of Housing, Communities and Local Government (MHCLG), on planning and building standards. As part of this engagement we had legal advice from David Wolfe QC on the draft the National Planning Policy Framework (NPPF) and the Planning Inspectorate's internal training advice. The list below does not include work we have discussed with officials on other areas relevant to our inquiry, such as social housing or the Disabled Facilities Grant.

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As part of our inquiry we conducted an extensive [survey](#) of local authorities. This identified that only 45% of local authorities had set targets on the proportion of homes that would be built to the higher optional standards of accessibility and adaptability<sup>1</sup>. Only 6% of authorities monitor what is actually built, and this is almost certainly considerably lower than the MHCLG [projections](#) of 45% of all new housing by 2024. In addition, local authorities reported that the data they hold on the existing accessible social housing stock, and the projected needs of disabled people locally, is generally poor. This lack of robust data potentially undermines strategic plans and leaves local authorities open to legal challenge from developers seeking to lower accessibility standards.

According to the English Housing [survey](#) there is currently a chronic and growing shortage of accessible houses. 1 in 3 disabled people in the private rented sector are living in unsuitable accommodation. Only 7% of UK housing stock has four basic accessibility features<sup>2</sup>. Fully wheelchair accessible properties are also in desperately short supply. A recent freedom of information request to local authorities by [Aspire](#) identified the average wait for a wheelchair accessible house as five years.

The costs of inaccessible housing are well documented, and include impacts on increased need for social care, more reliance on carers and family members, accidents (including those that are life-changing or fatal) and avoidable hospital admissions. All the cost benefit studies we reviewed demonstrated that considerable savings are achieved when measuring the impact of accessible housing across the whole system. Most importantly disabled people have a right to live independently and with dignity - inaccessible housing provides a significant barrier to this.

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<sup>1</sup> Categories 2 & 3 of Part M(4) as defined by the building regulations

<sup>2</sup> This corresponds to category 1 in Part M (4) of the building regulations, currently the minimum standard. It does not include an accessible downstairs toilet

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## Key dates, 2018

- 1<sup>st</sup> Feb CEO's meeting in Bristol, Planning Inspectorate & EHRC  
Rebecca Hilsenrath and Sarah Richards
- 29<sup>th</sup> March Legal advice from David Wolfe QC on local plans, inspectors and the PSED
- 9<sup>th</sup> May Legal advice from David Wolfe QC in shaping the [EHRC response](#) to the consultation on NPPF
- 11<sup>th</sup> May EHRC publish inquiry [report](#). Housing and Disabled People: Britain's Hidden Crisis.
- 25<sup>th</sup> May EHRC feedback on revised training advice by Planning Inspectorate for inspectors.
- 19<sup>th</sup> June Meeting with officials at HMCLG to discuss revised NPPF.

## National Planning Policy Framework (NPPF)

The Commission submitted a detailed response to the [consultation](#) on the revised NPPF, which sets out government's planning policies for England and how these are expected to be applied. Our primary recommendation was that the consideration of the needs of disabled people should be integrated into the policy and considered alongside social, economic and environmental considerations. This recommendation was rejected. Minor amendments were then made to the policy requiring Local Authorities to have a policy for meeting the housing requirements for different groups. MHCLG's [Equality Impact Assessment](#) of the NPPF states that local authorities will now be required to plan for disabled people's housing. However it is not entirely clear from our reading of the revised NPPF that this is the case, as the policy is much broader and lists various groups in reference to their housing needs.

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The requirement that the needs of disabled people are given parity with other groups is also not new. It is very similar to policies that predate the NPPF such as Planning Policy Guide 3, which set out a list of social groups the housing needs of which local planning authorities should meet. Listing disabled people alongside other social groups, as well as some not specified, does not highlight the particular need for more accessible housing. Moreover, it fails to understand that disability intersects with other listed groups, and that a target for accessible housing should therefore span housing provision for all other listed groups, not be set aside for a notional disabled population competing for homes with other social groups in the local plan.

The implication is that housing for disabled and older people can be met through specialist provision and niche solutions. This is neither desirable nor realistic. Most older and disabled people do not want to live in segregated communities, but in mixed ones where they can participate through work, education and social activities. Ensuring they have choice and control about where and with whom they live is the key to independent living. Joseph Rowntree [research](#) estimates that around 95% of older people live in general needs housing, and that the vast majority of those needing care will be cared for in their own homes. Accessible mainstream housing is integral to a sustainable and affordable health and social care strategy by both reducing health and care costs and facilitating employment.

Our assessment is that using planning policy to deliver more accessible housing is a convoluted way to achieve the policy aim of future proofing our housing for an ageing population. The modest changes made to the revised NPPF are unlikely to improve a system that is unduly complicated. Local Authorities told us that they are frustrated by an adversarial system that pitches them against developers, who generally have access to greater legal resources when challenging the viability of their proposals for accessible housing – especially smaller local authorities.

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A much simpler and more effective solution would be to amend the building regulations, to ensure that all new houses are built to a good minimum standard of accessibility and adaptability (Part M (4) 2 of the building regulations often referred to as Lifetime homes). This is currently the approach in London, Scotland and a small number of other authorities. We found no evidence that it impacted on supply. One major developer told us that if adopted universally as standard, there would not be any additional costs once the supply chains had adapted. The current default standard (Part M (4)1) is too low. Common adaptations such as an accessible toilet/wet room are difficult and expensive to install and major adaptations are impractical.

The current lack of a requirement to record which houses are built to the higher optional accessible standards is making it much harder for those needing suitable housing to identify it. In addition it means that we do not know how many accessible houses are being built. This is an issue that could be easily solved. If this information was readily available for those houses built since the 2015 regulations came in, it would greatly assist both local authority allocation policies and those seeking a suitable house in the private sector. It would in addition provide a mechanism to test if the revised NPPF policy has been successful in delivering more accessible homes. Officials we spoke to were not aware of any plans to evaluate the policy.

### **Planning Inspectorate**

Initial discussions we had with the Planning Inspectorate in late 2017 identified what they saw as a tension between the guidance they had from their sponsor department and the Equality Act. This was clarified at the meeting we had with them on 1<sup>st</sup> Feb, when they accepted their obligations and recognised that as primary legislation, the Equality Act effectively overrides internal departmental guidance, if there is any conflict.

The meeting identified that inspectors tended to focus on ensuring that proposals for optional accessible housing, could meet required standards for

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both evidencing need at a local level and ensuring commercial viability. The Inspectorate's default position was that proposals for housing built to the optional higher standard would typically be taken out if they did not meet these tests. We considered that this fell short of meeting its Public Sector Equality Duty (PSED) obligations, and that inspectors should be asking to see evidence and assessment of the level of need.

Given the chronic and growing shortage of accessible housing nationally, it is in our view unlikely that the needs of 13.1 million disabled people in Great Britain are not a significant factor in determining need for all Local Plans. Following this constructive meeting we procured a legal opinion from David Wolfe QC on the Planning Inspectorate internal training advice and included some aspects of this in our submission to the consultation on the NPPF.

Its advice said that (para 139) "The Inspector has no discretion to take any equality impacts of the plan into account as part of some overarching balancing act when deciding whether to recommend adoption"

This was considered to be wrong. The legal opinion is attached to this briefing, but identified that "the inspector is not only bound to discharge the PSED, they are also bound to consider whether the local authority has discharged the PSED."

In summary in para 31 of the opinion:

"It follows from all that that an inspector would not only be concerned with policies in a plan which provided for accessible housing, but would also need to assess the situation where nothing was provided in that regard. It is hard to see how that latter case – no provision or policies – could be said to be consistent with conformity with the NPPF (and thus soundness) let alone (regardless of the NPPF position) a lawful discharge of the PSED."

Following this, the Planning Inspectorate has revised its guidance and shared it with us for comment. The updated advice was a significant improvement and

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the reference to an inspector having no discretion on equality impacts was taken out. We advised that this updated advice should include a reference to the fact the PSED requires that 'sufficient information' be gathered to enable 'due regard' to be given to the matters specified in the PSED. In this instance, this would require local authorities to gather and analyse good information on the projected future housing needs of disabled and older people. They did however not include this, stating that this requirement is covered elsewhere in their advice to inspectors. Our view is that the training advice would be strengthened by this inclusion.

Apart from that omission, we were broadly satisfied with the revised advice. Simply put, we understood the updated advice represented a shift from local authorities having to justify why the optional standards were being used, to a focus on ensuring that need had been adequately assessed by them for all types of housing and reflected in the plans.

Yours sincerely

**Angus Cleary**

Inquiry Head

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