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GARDEN-GRABBING: SUSTAINABLE FUTURE OR ABUSE OF GREEN SPACES (VERSION 2) POLICY CONSULTATION

For Review by YHACS Member Societies and their Communities

**CONSULTATION ON THE PRACTICE OF
GARDEN-GRABBING (VERSION 2)**
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I. EXECUTIVE SUMMARY

I.1 Garden-grabbing is a phenomenon that is on the rise with the rapidly increasing demand for housing across England. A type of tandem development—the construction of a structure, building or new home on the site of an existing home, likely in space once used as garden—garden grabbing is defined by YHACS as **any brownfield development in which the balance between green and built space is altered in favour of the latter with the sole purpose of increasing density of units, and where such an alteration is counter to the character of the area as defined by the community.**

I.2 Such development actually falls within the guidelines of existing planning policy as brownfield development, as defined in Planning Policy Statement 3: Housing. Coupled with central Government drive to increase housing density and a national target that 60% of all new development is brownfield development, there is growing pressure on local planning authorities to accept planning applications of the garden grabbing type.

I.3 The critical issue is whether or not to allow such garden-grabbing to take place is the balance between the priorities of increasing housing density on the one hand, and the integrity of our green spaces and community prerogative in planning on the other. While housing density targets are meant to ensure sustainable housing provision, sustainability in the broader sense of the relationship of the built and natural environments depends fundamentally on a balance of the built environment and green spaces that is present in our cities, towns and villages.

I.4 While it is clear that the Government recognises the need for green spaces within our built environment, as evidenced through its planning objectives in *Planning Policy 9: Biodiversity and Geological Conservation* and *PPS 17: Planning for open space, sport and recreation*, there is a definite conflict with its planning policy regulations with regard to housing density where the latter leads to the garden-grabbing variety of development. The unfortunate effect of central Government planning policy guidance and targets, which ultimately shapes regional spatial strategies and by extension, translates to local development frameworks, is to put pressure on the local planning authorities to place such quantitative figures as housing density targets high on their list of priorities when considering new development or redevelopment, in some cases to the detriment of what is most appropriate for the local area.

I.5 YHACS takes the position that priorities of sustainability—both increased housing density and the maintenance of a balance between the green and built environments—need not be conflicting, provided the policy framework is set up in a manner which allows for a more considered and sustainable approach to increasing housing density and brownfield development.

I.6 The legal justification for garden-grabbing was originally the *Planning Policy Guidance Note 3* issued by Deputy Prime Minister (DPM), John Prescott in 2000, and is now largely unchanged in the revised *Planning Policy Statement 3* in its definition of “previously developed land.”

I.7 The implications of these definitions were highlighted when it was revealed in 2005 that studies commissioned by the Deputy Prime Minister, John Prescott, recommended the use of back gardens as a potential space for development in the South East, particularly in London. Since its inception, the Sustainability of Land Use and Transport in Outer Neighbourhoods (SOLUTIONS) project has published findings from studies in London and Cambridge, in which it is suggested that back garden infill should be considered as an option of releasing land to meet increasing housing development demands.

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I.8 As a result, there have been recent claims by the Government's critics, that despite the nominal responsibility of planning permission still resting with local councils, such planning authorities have not the power to refuse planning permission to previously residential development schemes that quite clearly are making use of brownfield land.

I.9 Despite a Conservative Party campaign to reorient Government policy to prevent garden grabbing, including the introduction of a Bill that would remove gardens from the definition of gardens from the Housing Planning Policy Statement by Greg Clark, Tory MP for Tunbridge Wells, in February 2006, and a five-point plan for developing policy to discourage the practice, there has been little success by those concerned to stem the practice.

I.10 YHACS puts forward several reasons for opposing the practice of garden grabbing, including

- (1) the strain on local infrastructure from overdevelopment
- (2) the negative impact of reducing garden and green spaces in city and town centres
- (3) the impact of an inappropriately proportioned development scheme on the character of a neighbourhood
- (4) the tendency for developers not to include affordable housing in such high-density developments, further exacerbating the problem of affordable housing
- (5) the potential negative economic impact of high-density housing on surrounding properties, as the aesthetic quality of the area is reduced
- (6) the inefficiency of demolishing a serviceable structure just to rebuild another in its place.

I.11 In view of these impacts, YHACS makes several proposals for reform of existing Government policy and the introduction of further measures to prevent garden grabbing

(1) Reform of the Planning Policy Framework. In order to ensure that the brownfield development that is undertaken contributes to, rather than undermines the vibrancy and character of our local areas, YHACS proposes a number of reforms to the planning policy framework, including

- the exclusion of gardens from the definition of PDL (Annex B, PPS 3, "Definition: Previously-developed land," paragraph 2).
- a prioritisation of different types of previously developed land, such that those spaces that have a negative impact on the local area in their current condition be targeted for development first before land and buildings which are either in some productive use or land that is open. Using the categorisation developed for the National Land Use Database of Previously Developed Land,¹ the proposed priorities for brownfield development would descend from:
- a strengthening of the requirement for green spaces in new and redevelopment schemes to ensure that the ecological benefits of back gardens in urban areas are salvaged alongside attempts to increase housing density. Just as quantifiable targets are seen as necessary to achieving appropriate levels of housing density, percentage

¹ *The National Land Use Database of Previously Developed Land (NLUD-PDL): 2004 National and Yorkshire & the Humber Regional Summary.* Available: http://www.nlud.org.uk/draft_one/key_docs/pdf/reg_summ_sm/Yorkshire%20&%20the%20Humber%20Regional.pdf.

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targets could be established, albeit at a local level, for the proportion of green to built space in a given local area.

(2) A Structure of Incentives for Genuine Brownfield Development. Once priorities have been set for genuine brownfield development, YHACS proposes the development of a structure of fiscal incentives for the development of such sites, including

- the reform and reduction of empty property relief by retaining the existing 100% relief for short-term empty property (up to three months); reducing the rate of empty property relief provided after that time; and ensuring that factories and warehouses receive the same level of relief as other sectors.
- the taxation of derelict and brownfield land, on consultation with stakeholders. These measures would ensure that genuine brownfield development and reuse of existing buildings will increase.
- the introduction of a planning gain supplement, which will standardise the contribution made by developers to the local infrastructure when developing a site, provided that it is directed to the local authority.
- elimination of tax relief that is currently available for the sale of gardens through private residence relief

(3) Strengthening of Local Authority Discretion in Planning Decisions

Finally, and most importantly, YHACS proposes that Government reinvigorate the discretion of local planning authorities more generally, to ensure that they are able to refuse planning permission to high-density schemes where inappropriate for the local area, including

- the revision of PPS 3 to include an explicit statement that gives ultimate discretion over the setting of housing density and brownfield development targets to local authorities.

II. INTRODUCTION

Garden-grabbing is a subject which is of increasing concern to civic society members. With this in mind, YHACS has conducted a review of the current situation and has developed a policy statement on which to campaign for change to planning law and guidance. This report sets out to summarise our thinking on the matter and will be the subject of a consultation with our member societies within the Yorkshire and Humber region before receiving final endorsement by the Association.

III. BACKGROUND INFORMATION

What is Garden-Grabbing?

III.1 With the ever-increasing demand for housing across England and the consequent new Government targets for sustainable development, there has been a dramatic rise in the practice of developing previously residential sites. Such development varies from more traditional modes of what is called tandem development—the construction of a structure, building or new home on the site of an existing home, likely in space once used as garden—to the construction of entire blocks of flats on a site previously intended for a single home.

III.2 Tandem development in and of itself is a regular fact of our evolving townscapes, particularly as needs change. Further, this type of development technically falls within the Government's classification of brownfield development—a practice that the Government is keen to promote through increasingly stringent planning and development targets, particularly with regard to housing density figures. Certainly, with the increase in demand for housing across certain parts of the country, the practice of redeveloping previously residential sites to provide more units of housing may be the only way of saving our greenbelt.

III.3 However, there is a very real impact of tandem development on the green spaces, character, and public amenities of our cities, towns and villages. The practice is particularly widespread in the South East where, on average, more than 40% of new homes are built on such land, but accounting for as much as 100% of new homes in South Buckinghamshire in 2004, 89% in Surrey Heath and 68 % in South Oxfordshire. In fact, *The Times* reported in May 2006 that 20,000 homes classified as brownfield development were more specifically being built on sites which were previously back gardens.² The Department for Communities and Local Government has recently estimated that just below one-quarter of the 72% of new homes built on brownfield sites were built on “previously residential land.” Another survey published in April of 2006 puts the figure at closer to two-thirds. There are even cases of development on cricket pitches and sports grounds as “brownfield sites.”³

III.4 A large proportion of this rise in back-garden development has been due to an increase in practice that has become known as “garden-grabbing”. Unlike more traditional instances of tandem development which involve the simple construction of a structure or home adjacent to and on the same site as an existing building with both sharing vehicular access, *garden-grabbing* generally entails a much more fundamental transformation of the site. There has been an alarming increase in cases in which a developer acquires a site occupied by a single or small number of dwellings, which are then demolished to make way for a substantially higher number of dwellings, that are often out of keeping with the character of the street and/or eliminate the green space associated with the site's previous use.

Housing Density Targets and Garden-Grabbing

² Bennett, Rosemary (2006). Builders swallow up gardens for flats. *The Times*, 25 May 2006. Access: The Times Online, <http://www.timesonline.co.uk/article/0,,2-2195946,00.html>. Access date: 20 September 2006.

³ Garden-grabbing developers. UK Land Directory Ltd. March 2006. Access: <http://www.uklanddirectory.org.uk/garden-grabbing-developers.htm>.

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III.5 Unfortunately, the distinction between relatively low-impact tandem and brownfield development and the more dramatic garden-grabbing is not definitively clear in government policy. Not all tandem development is necessarily detrimental to the local area, nor should it be termed “garden-grabbing.” For purposes of clarification, **YHACS defines garden-grabbing as any brownfield development in which the balance between green and built space is altered in favour of the latter with the sole purpose of increasing density of units, and where such an alteration is counter to the character of the area as defined by the community.**

III.6 As is the case with tandem development, such “garden grabs” legally qualify as brownfield development, and as such, they are technically within planning guidelines. Further, with the increasingly stringent central Government targets for brownfield development and housing density, such development has become not only accepted but encouraged. Consequently, although local planning authorities theoretically have the prerogative to refuse planning permission for garden-grabbing schemes on the basis of design and/or scale, the recent emphasis on increasing housing density through brownfield development creates a pressure on local authorities which prevents them from doing so.

III.7 The critical issue is whether or not to allow such garden-grabbing to take place is the balance between the priorities of increasing housing density on the one hand, and the integrity of our green spaces and community prerogative in planning on the other. The first of these was established firmly as a sustainable answer to the increasing demand for housing when the Urban Task Force led by Lord Rogers in 1999 recommended that housing density targets would have to be increased in order to provide for more sustainable development in future. Such a recommendation was put into broad planning policy guidelines by the Office of the Deputy Prime Minister in 2000 in its *Planning Policy Guidance 3: Housing*,⁴ and later in 2003 in its *Sustainable Communities Plan*.⁵ The housing density priority was reinforced with the findings of the controversial Barker Review of 2004, which painted a picture of the unsustainable nature of existing housing strategies. As a result, recent planning policy statements (which revise previous planning policy guidance and include PPS 3 mentioned above) reflect the emphasis on reuse of previously developed land and the increase in housing density (see *Planning Policy Statement 3: Housing* and *PPS 6: Planning for Town Centres*). Specifically, Government has set a target that 60% of all new development should be on previously developed land (PDL) by 2008—a target that has been implemented through regional spatial strategies, including the Yorkshire and Humber Plan, with its more specific targets for various local authorities.

III.8 The logic behind the emphasis on reuse and density increases is simple. Currently at a population of 60 million, the population of the UK is projected to increase to 65 million by 2023 and 67 million by 2036,⁶ which would mean an increase in demand for housing of approximately 4 million new homes in the next 25 years, and yet the green belt and planning regulations restrict the development of greenfield land to provide the necessary supply.⁷ As a result, development to increase the housing supply on existing residential land is a necessary consideration. One of the most vociferous supporters of housing density targets has been the Campaign to Protect Rural England (CPRE), which has suggested that if we are to keep our

⁴ ODPM (2000). *Planning Policy Guidance 3: Housing*. Access:

http://www.communities.gov.uk/index.asp?id=1143942#P15_407. Access date: 20 October 2006.

⁵ ODPM (2003). *Sustainable Communities: Building for the Future*. Access:

http://www.communities.gov.uk/pub/872/SustainableCommunitiesBuildingfortheFutureMaindocumentPDF2121Kb_id1139872.pdf. Access date: 10 October 2006.

⁶ Office for National Statistics (2005). *Press Notice*, 20 October 2005, London: ONS.

⁷ Rogers, Richard, et. al. (1999). *Towards an urban renaissance: report of the Urban Task Force - executive summary*. London: Department of Environment, Transport and the Regions.

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green belt in tact and still accommodate the growing need for new homes, we need to discover better ways of utilising the existing residential space that we have in our cities, towns and villages.⁸

III.9 However, at the same time, sustainability in the broader sense of the relationship of the built and natural environments depends fundamentally on a balance of the built environment and green spaces that is present in our cities, towns and villages. There is no shortage of evidence to suggest that this balance is as critical to the sustainability of our communities as the density of our housing stock. The relationship between green space and built environment within our local areas has several key impacts, most importantly on the sense of place and ecology of the area. Not only does the natural environment enhance the aesthetic and interactive quality of the public realm for residents and visitors within the local area,⁹ but it more importantly provides a haven for biodiversity that is critical to reducing the impact that human activities and structures have on the climate that is evidently changing at an increasing rate.¹⁰

III.10 While it is clear that the Government recognises the need for green spaces within our built environment, as evidenced through its planning objectives in *Planning Policy 9: Biodiversity and Geological Conservation* and *PPS 17: Planning for open space, sport and recreation*, there is a definite conflict with its planning policy regulations with regard to housing density where the latter leads to the garden-grabbing variety of development. Consequently, the Sustainable Development Commission has recently reported that the current business of regeneration is driven almost solely by economic considerations, missing out what it calls a “key element”: according to the Commission, “While environmental issues such as pollution, poor public transport and lack of green space drastically affect quality of life in poor communities, regeneration efforts remain largely driven by social and economic concerns.”¹¹

III.11 The unfortunate effect of central Government planning policy guidance and targets, which ultimately shapes regional spatial strategies and by extension, translates to local development frameworks, is to put pressure on the local planning authorities to place such quantitative figures as housing density targets high on their list of priorities when considering new development or redevelopment, in some cases to the detriment of what is most appropriate for the local area. Local prerogative is hindered as a result of the drive to meet the easily quantifiable priorities such as a figure for dwellings per hectare—a target that allows local authorities to show that they are in line with Government priorities in a way that the day-to-day safeguarding of local character and green spaces cannot, as the latter are more difficult to quantify and do not form the basis for any similar Government target.

⁸ CPRE (2003). Housing plan lacks targets to deliver. 3 July 2003. Access: <http://www.cpre.org.uk/news-releases/news-rel-2003/34-03.htm>. Access date: 21 October 2006.

⁹ Halpern, David (1995). *Mental health and the built environment: more than bricks and mortar?* London: Taylor & Francis Ltd.; Harvey, Adrien (2004). *Building a healthier future: the built environment and public health*. In *Whose responsibility is it anyway? Perspectives on public health, the state and the individual*. London: CABE.

¹⁰ CABE (2004). *Environmental sustainability and the built environment*. Access: <http://www.cabe.org.uk/AssetLibrary/2364.pdf>. Access date 21 October 2006; Town and Country Planning Association (2001). *Sustainable design and construction: Guidance for planners on preparing development plan policies at the regional and local levels*. A TCPA Sustainable Housing Forum Guide. London: TCPA; TCPA (2004). *Biodiversity by design*. London: TCPA; English Nature (2003). *Position statement: sustainable development*. Access: <http://www.english-nature.org.uk/news/statement.asp?ID=30>. Access date: 20 October 2006; UK Biodiversity Biodiversity Group (2001). *Sustaining the Variety of Life: Five Years' of UK's Biodiversity Action Plan*. Report to the UK Government, the Scottish Executive, the National Assembly of Wales and the Northern Ireland Executive. London: Department of the Environment, Transportation and the Regions; London Wildlife Trust (2002), *Brownfield? Greenfield? The threat to London's unofficial countryside*, report to London Wildlife Trust on behalf of the London Brownfields Forum;

¹¹ Sustainable Development Commission (2006). *Housing*. Access: <http://www.sd-commission.org.uk/pages/housing.html>. Access date: 20 October 2006.

III.12 Nonetheless, there is little doubt that housing strategy must change to adapt to the population's needs in order to ensure the sustainability of the housing stock. As such, it is important to note that YHACS does not intend to suggest the focus on housing density and reuse of brownfield development is not valid and even necessary. On the contrary, YHACS strongly supports the sustainable and creative reuse of certain previously developed land, and in particular, the innovation within this type of development of increasing housing density, provided it is undertaken with appropriate care for the necessary balance with the character and ecology of the local area. In fact, YHACS takes the position that these priorities need not be conflicting, provided the policy framework is set up in a manner which allows for a more considered and sustainable approach to increasing housing density and brownfield development.

III.13 As such, garden-grabbing need not be a controversial feature of our planning system. Local planning authorities should have the discretion to meet Government targets in a way that allows them to protect the local area's aesthetic and environmental balance. However, a further look at the current planning policy guidance and the interpretation of that guidance suggests that the policy framework in place may be largely to blame for the difficulties facing local planning authorities at present as they attempt to exercise such discretion.

The Legal Background and Policy Debate about Garden-grabbing

III.14 The legal justification for garden-grabbing was originally the *Planning Policy Guidance Note 3* issued by Deputy Prime Minister (DPM), John Prescott in 2000, and is now largely unchanged in the revised *Planning Policy Statement 3* which defines "previously developed land" in the following way:

"Previously-developed land is that which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure."¹² (PPS 3 Annex B: Definitions)

The Statement further suggests that

"Net dwelling density is calculated by including only those site areas which will be developed for housing and directly associated uses, including access roads within the site, private garden space, car parking areas, incidental open space and landscaping and children's play areas, where these are provided."¹³ (PPS 3 Annex B: Definitions)

III.15 The implications of these definitions were highlighted when it was revealed in December 2005 that a study commissioned by the Deputy Prime Minister, John Prescott, recommended the use of back gardens as a potential space for development in the South East, particularly in London. In April 2004, the DPM's office, along with the Government Offices for the Regions, the Department for Transport and Transport for London pledged funds to a four-year research project to be conducted by the Centre for Urban Studies at Cambridge University into ways of achieving sustainable development, particularly in the South East where demand is notoriously outstripping supply. The project, entitled, *Sustainability of Land Use and Transport in Outer Neighbourhoods (SOLUTIONS)* has periodically been publishing findings, and in December of 2005, the initial findings for the London case study were published, in which it was claimed that

¹² *Planning Policy Statement 3: Housing, Annex B, Definitions*. Office of the Deputy Prime Minister. November 2006. Access: http://www.communities.gov.uk/pub/806/PlanningPolicyStatement3Housing_id1504806.pdf.

¹³ Ibid.

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“Excluding public open space (as defined by the LDF) there are extensive areas of greenbelt land, especially to the North. This could be brought into use – in the teeth, no doubt, of intense local opposition. The second decision concerns redevelopment, either piecemeal or comprehensive. Much of the housing is of an age where redevelopment is quite conceivable. Given the prevailing low densities, redevelopment at double the density (e.g. from 25 dpha to 50 dpha) could be viable. Equivalently, there is considerable potential for back garden infill.”¹⁴ (SOLUTIONS, 2005)

III.16 A further study by the SOLUTIONS group, this one with regard to Cambridge, found that

“Back garden development offers considerable potential. If all were used, at a density of 50 dpha, then the gain could be 900 units. The redevelopment of the council estate, with the size of open space halved, offers 16 ha of housing with a potential yield of 500 extra dwellings. The redevelopment of the main Trumpington Road frontages between Waitrose and the Post Office, at the same time widening the road, could deliver 125 new residential units and substantially more commercial space.

Taken together the yield could be an extra 1500 units. Gradual densification through renewal elsewhere could realise, say 500 more – a total of 2000 new units. That probably represents the very maximum that could be achieved over the next 50 years, far lower than assumed in the Cambridge Futures study, but very much higher than indicated by the Urban Capacity Study.

If, say, 50% of this densification happened by 2031, then this would be 1000 units or 2,250 people at the standard design assumption for household size.”¹⁵ (SOLUTIONS, 2005)

III.17 As a result, there have been claims by the Government’s critics recently that despite the nominal responsibility of planning permission still resting with local councils, such planning authorities have not the power to refuse planning permission to previously residential development schemes that quite clearly are making use of brownfield land. It is on this basis that an argument is made against the current policy regime, which has resulted from a combination of planning policy guidance and central Government targets.

The Conservative Campaign Against Garden-grabbing

III.18 In 2006, Greg Clark, Tory MP for Tunbridge Wells, who was concerned about the practice of garden-grabbing in his own constituency, made just such a claim, sparking a Conservative campaign against Labour’s management of the planning system in order to stop such development. He suggested that the recent increase in the practice shows that the balance has been tipped in favour of developers and away from planners.

III.19 Clark went on to suggest that, in fact, things had changed with the 2000 Planning Guidance (changes now preserved with the 2006 PPS 3). While the definition of brownfield sites has been around since 1985, it had never been a part of planning guidance. It was “merely a convenient way of recording statistics.”¹⁶ Yet, when the Government introduced targets for building homes and building on brownfield sites in particular, it took the mere

¹⁴ SOLUTIONS (2005). The London case study: initial work on the local study areas. Cambridge University.

¹⁵ Barton, Hugh, et. al. (2005). Findings of local design scenarios, Cambridge. SOLUTIONS. Cambridge: Centre for Urban Design, Cambridge University. Access: [http://www.suburbansolutions.ac.uk/DocumentManager/secure0/05B_Findings%20of%20local%20design%20scenarios,%20Cambridge%20\(paper\).pdf](http://www.suburbansolutions.ac.uk/DocumentManager/secure0/05B_Findings%20of%20local%20design%20scenarios,%20Cambridge%20(paper).pdf).

¹⁶ Quoted in the House of Commons Hansard Debates for 21 June 2006 (pt 0586). Column 1419

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definition of brownfield land to a whole new level of importance, according to Clark. Also, the Government has since introduced higher density targets. Whereas in 1997, the average density of new build homes was 24 units per hectare, it is now 42 units, and according to Planning Policy Statement 3, it could increase to almost 70 in urban areas. To achieve this, Clark concluded that garden-grabbing is not being driven by local councils or developers; rather it is a central government target.¹⁷

III.20 Confirming such sentiments, Clark received information from the Commons Library that “There is enough in the guidance to justify developers appealing any refusal of this type of application with every chance of success...In other words, I do think that the overall policy environment has changed in respect of developing on gardens.”¹⁸

III.21 Further, the policy that allows developers to appeal a planning decision now means that developers can apply for an inflated number of dwellings on a site, only to appeal when the application is rejected with a number reduced to their original intention, and perhaps the agreement to contribute to a local amenity, and the council is likely to approve, saying they won the best deal possible. Rather alarmingly, as well, a developer may even be able to obtain a compulsory purchase order for a homeowner’s back garden if it can be shown that the new development provides significant “economic, social or environmental benefit to the area,” according to Caroline Spelman, shadow spokeswoman for local government.¹⁹

III.22 Thus, despite the provisions for communities to develop Village Design Statements (VDSs), the rules have been designed in a way that favours high density development of the kind that is classified as garden-grabbing.

III.23 The practice becomes all the more controversial when compared with the rather opposite practice of demolition of complete neighbourhoods that is taking place elsewhere in the country. While the Government is exploring back garden development where demand for housing is high, in other places large numbers of serviceable houses are being demolished through lack of demand. For instance, in Liverpool, the Deputy Prime Minister only recently permitted the demolition of 400 homes out of a lack of demand in Edge Lane and the need for an easier route into Liverpool city centre from the M62—a demolition scheme that is estimated to cost £300m. Such demolition comes as part of the Government’s plans through the Pathfinder scheme to demolish 400,000 homes across Newcastle, Sheffield, Burnley, Birmingham, Salford, and many others²⁰

III.24 As a result of such inconsistencies, in February 2006, Greg Clark presented a ten-minute-rule Bill “to remove gardens from the definition of previously developed land and thereby return decisions over proposed garden land developments to the discretion of local planning authorities.” The Bill would close the loophole that allows such spaces to be used for new development. For Clark, the Bill was not meant to “preserve in aspic every garden in the country but...to return to a situation whereby local authorities—democratically elected representatives—make case-by-case decisions.”²¹

III.25 The Bill was originally tabled as an Early Day Motion, which attracted more than 170 MP signatures. As for the latest version of the Bill, 40 Labour MPs have already signed.

¹⁷ Ibid.

¹⁸ Ibid.: Column 1419.

¹⁹ Mulholland, Helene (2006). Tories warn of Labour “garden grab.” *The Guardian Unlimited*. 18 August 2006. Access: Guardian Online, <http://politics.guardian.co.uk/homeaffairs/story/0,,1853359,00.html>. Access date: 20 September 2006.

²⁰ Bunyan, Nigel. Prescott upholds ‘social cleansing’ of 500 homes. *The Telegraph*, 17 February 2006.

²¹ Ibid.

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Although the Bill was overturned on first reading in July, it was due for a second reading in October 2006. However, as previously, the Government used a parliamentary procedure to block the Bill.

III.26 Nonetheless, the Tory spokesman for housing, Michael Gove, has made it known that a Conservative government would stop classification of gardens as brownfield sites. In fact, since the original bill was proposed, MP Spelman has brought out a five-point plan to address the problem, as part of their “Labour’s Garden Grab” campaign launched in August. The plan includes (1) giving local communities greater say in where new development is undertaken and scrapping unelected regional assemblies, (2) strengthening planning legislation with regard to green spaces and character of the local area, (3) ensuring more eco-friendly construction in the development of new homes whilst removing Whitehall rules that prevent sufficient green space and parking in new homes, (4) providing more assistance to individuals and families trying to break into the property market by supporting shared and flexible ownership schemes, and (5) cancelling the council tax revaluation promised by the Labour Government (which, according to Conservatives, will increase rates on garden space to discourage the maintenance of such empty spaces).²²

III.27 Clark has claimed that the practice of garden-grabbing results in “peaceful and attractive leafy avenues with nicely proportioned homes and gardens ruined by developers bringing in the bulldozers, flattening the existing property and throwing up blocks of flats.” He further suggested that “the planning laws have been tilted against councils and in favour of developers. The balance needs to be restored.”²³

The Labour Government’s Response

III.28 However, there are some who claim that developments of previously residential sites are no more encouraged by the current Government than any other Government. From this basis, the Labour Government struck back in 2006 at Conservative claims that the planning legislation of 2000 has changed the rules for previously residential development. In fact, Yvette Cooper, Labour Minister for Housing and Planning insisted that there had been no change of policy. Labour Minister for Communities, Baroness Andrews, suggested that local authorities already have all the authority they need to prevent the insensitive development of the kind decried by critics of the practice, and that this authority is even being strengthened by new planning guidance that promotes high-quality design which is sympathetic to its surroundings. The Government has further responded to claims that planning legislation should be tightened to prevent garden-grabbing by suggesting that any more red tape in the planning system will start to infringe on the rights of individuals who are simply building extensions onto their existing homes, according to the Government.²⁴

V. YHACS’ Position

V.1 As outlined above, the practice of garden grabbing (or tandem development) has the potential to change fundamentally the character of residential areas in our cities, towns and villages. Yet it is not clear that the situation that now prevails in law and which has been enshrined in planning policy has actually been properly debated or subjected to parliamentary scrutiny. Representations made to YHACS on this subject have suggested the need for YHACS to develop a policy statement which can be used to campaign for change.

²² Labour’s garden grab (2006). Access: The Conservatives Online, http://www.conservatives.com/tile.do?def=campaigns.display.page&obj_id=131201. Access date: 20 September 2006.

²³ Quoted in Philip Webster. Back-garden developers home in on rich suburbs. *The Times*, 7 July 2006.

²⁴ Mulholland, Helene (2006). Tories warn of Labour “garden grab.” *The Guardian Unlimited*. 18 August 2006. Access: Guardian Online, <http://politics.guardian.co.uk/homeaffairs/story/0,,1853359,00.html>. Access date: 20 September 2006.

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V.2 In summary, YHACS believes that there are several negative effects of the practice of garden-grabbing that have been highlighted by its critics:

- (7) There is a very real strain on local infrastructure from the dramatic increase in housing density by large-scale high-density developments encroaching on otherwise low-density areas.
- (8) Ecologically, garden-grabbing has a direct impact of reducing garden and green spaces in city and town centres (especially when accompanied by the concreting over of front gardens for parking spaces). As a result of such development, the delicate balance between the built and natural environments in our local areas is compromised. The end result may be a safeguarded green countryside, but it will also mean increasingly brick and concrete cities and towns.
- (9) The impact of an inappropriately proportioned development scheme on the character of a neighbourhood can be detrimental to the sense of place associated with a particular locality. For example, in cases where a block of perfectly serviceable Victorian terraced houses have been demolished to make way for a high-density scheme of modern flats, the long-term implications of losing the original properties on the area's public realm can far outweigh the short-term, quick-win profits the developer may stand to make from the scheme. It is, of course, worthwhile remembering that today's architecture and design styles will form the heritage of tomorrow, and when handled well, can make a valuable contribution to the townscape. The suggestion here, however, is that the sort of piecemeal development that results from garden-grabbing schemes is uncoordinated with no overall strategy or vision in mind and therefore not only fails to enhance the public realm but can actually be damaging both in terms of the aesthetic appeal of an area and in the potential loss of vernacular styles.
- (10) According to critics, more often than not, high-density developments that replace previously low-density residential sites tend to provide housing that is priced above the average for the area. Rather than building affordable housing, there are reports of such developments producing flats selling for £600,000 or more in places like Buckinghamshire. According to planning legislation, developers are not obliged to provide affordable housing if a project includes fifteen or fewer units.
- (11) There is a further potential negative economic impact of high-density housing on surrounding properties, as the aesthetic quality of the area is reduced by certain high-density projects (e.g., a £250,000 4-bedroomed cottage in Louth, Lincolnshire has been valued at £230,000 because of the plans for 27 properties to be built in the plot adjacent).
- (12) In view of the environmental impact of such developments, it is not efficient and consequently not sustainable to demolish a serviceable structure just to rebuild another in its place. In certain circumstances, such practice can be a waste of energy and resources.

V.3 Thus, while increasing housing density may be a valid policy priority, the impact of such development practice has a potentially negative net effect if it infringes on the green space/built environment balance and/or the community prerogative to prevent those developments that infringe on the sense of place of a local area.

V.4 In response to the above deleterious impacts, YHACS suggests that the solution to overcoming the negative effects of garden-grabbing whilst retaining our quest for sustainable housing provision, lies in a revision of the policy framework that results from current planning guidance, legislation, strategies and procedures, as well as careful consideration of proposed reforms to simplify the planning system.

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V. YHACS Proposals YHACS proposes a three-pronged approach to the abuse of development on previously residential land: first, a reform of the planning policy and regulatory framework governing development of previously developed land; secondly, the establishment of fiscal incentives for the redevelopment of genuine brownfield development; and finally, the strengthening of local authority discretion in planning decisions.

V.1 Reform of the Planning Policy Framework.

In order to ensure that the brownfield development that is undertaken contributes to, rather than undermines the vibrancy and character of our local areas, YHACS proposes a number of reforms to the planning policy framework.

V.1.1 At present, PPS 3 (Housing) classifies previously developed land as “that which is or was occupied by a permanent structure, including *the curtilage of the developed land* and any associated fixed surface infrastructure.” While the latest version of this planning guidance, published in December 2006, has removed the explicit reference to private garden space as legitimate PDL, the current definition would still qualify gardens as PDL.

V.1.2 Thus, the first proposed reform is the exclusion of gardens from the definition of PDL (Annex B, PPS 3, “Definition: Previously-developed land,” paragraph 2). This step is critical because once gardens are no longer classified as brownfield development, then the likelihood of garden grabbing will be dramatically reduced. Further, local planning authorities would be released from the obligation to accept garden-grabbing schemes as “sustainable development.”

V.1.3 Once gardens are removed from classification as brownfield sites, there needs to be a redirection of development to genuine brownfield sites. This can be achieved by prioritising genuine brownfield development according to greatest benefit to the community.

V.1.4 To ensure that genuine brownfield development is a first choice in meeting the overwhelming demand for housing, YHACS would propose that the Government formally recognise that the development of certain types of previously developed land will accrue greater external benefits to the community than others. Clearly, a disused factory which stands empty for years, attracting clutter and anti-social behaviour has a negative impact on the surrounding area in economic and social terms, whereas a clear plot is far less likely to carry these negative effects and may have a positive impact on the character of an area. Further, the redevelopment of an existing building to a new use will have less impact overall on the character of the local area than will the development of a previously empty plot.

V.1.5 Thus, to add to the “town-centre first” approach advocated by current planning regulations, YHACS would argue for a prioritisation of different types of previously developed land, such that those spaces that have a negative impact on the local area in their current condition be targeted for development first before land and buildings which are either in some productive use or land that is open. Using the categorisation developed for the National Land Use Database of Previously Developed Land,²⁵ the proposed priorities for brownfield development would descend from:

(1) *Disused/Uninhabitable Buildings*

²⁵ *The National Land Use Database of Previously Developed Land (NLUD-PDL): 2004 National and Yorkshire & the Humber Regional Summary.* Available: http://www.nlud.org.uk/draft_one/key_docs/pdf/reg_summ_sm/Yorkshire%20&%20the%20Humber%20Regional.pdf.

- Land type B—“buildings, residential and industrial, which have been vacant for a year or longer and are structurally sound and in reasonable condition.”
- Land type C—“land or buildings so damaged by previous development, e.g. contamination, sub surface structures, that it is incapable of beneficial use without treatment.”

(2) *Buildings/land in Productive Use*

- Land type D—“land and buildings that are currently in productive use, whether fully or partially occupied [that] have been formally identified by the planning system, as redevelopment opportunities, through development plans or planning consent.”
- Land type E—“land and buildings that are currently in productive use, whether fully or partially occupied [that] have not been formally identified by the planning system but are considered to have potential for redevelopment.”

(3) *Land Not in Use*

- Land type A—“land where there are no buildings and could be redeveloped without treatment, although on or off site constraints, e.g. infrastructure, may exist.”²⁶

V.1.6 In fact, the first two categories of land make up almost half of all PDL. According to the Land Use Database, Land Type B accounted for the greatest proportion at 30.98% of all previously developed land in England, and 36.0% of all PDL in the Yorkshire and Humber region, to which can be added that proportion which is Land Type C, at 6.55% and 9.6% of housing in England our region respectively.

V.1.7 It is accepted by YHACS that this prioritisation does not coincide with ease of development. Certainly, land of Type C will most likely be marginally or even non-viable from a commercial point-of-view. However, this prioritisation reflects an accurate contribution of redevelopment to the quality of the public realm and social well-being, which extends to the attractiveness of local areas for investment. By formally recognising that not all types of PDL offer the same potential benefits through development, Government will more effectively encourage regeneration that contributes to the renaissance of an area’s character, rather than its demise.

V.1.8 To this end, YHACS also proposes a strengthening of the requirement for green spaces in new and redevelopment schemes to ensure that the ecological benefits of back gardens in urban areas are salvaged alongside attempts to increase housing density. Just as quantifiable targets are seen as necessary to achieving appropriate levels of housing density, percentage targets could be established, albeit at a local level, for the proportion of green to built space in a given local area.

V.2 **A Structure of Incentives for Genuine Brownfield Development**

Once priorities have been set for genuine brownfield development, YHACS proposes the development of a structure of fiscal incentives for the development of such sites.

V.2.1 Such proposals have already been put forward in reports including the *Barker Review of Housing Supply* (2004), *Barker Review of Land Use Planning* (2006), HM Treasury’s *Tax incentives for development of brownfield land* (consultation ended June 2007)

V.2.2 Reforming the empty property tax relief for businesses would force owners of disused buildings to make use of or sell on otherwise suitable space for either housing or commercial use. As such, YHACS supports the Lyons Inquiry’s proposal to reform and reduce empty

²⁶ Ibid.

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property relief by retaining the existing 100% relief for short-term empty property (up to three months); reducing the rate of empty property relief provided after that time; and ensuring that factories and warehouses receive the same level of relief as other sectors. We also support the Inquiry's further recommendation that the Government develop proposals for the taxation of derelict and brownfield land, on consultation with stakeholders. These measures would ensure that genuine brownfield development and reuse of existing buildings will increase.

V.2.3 YHACS also supports the introduction of a planning gain supplement, which will standardise the contribution made by developers to the local infrastructure when developing a site, provided that it is directed to the local authority. Such a tax would ensure that any for overdevelopment that makes its way through the planning system, the developer would at least have to mitigate its strain on what would otherwise be overstretched provision of roads and public services.

V.2.4 Further, the tax relief that is currently available for the sale of gardens could be eliminated. According to current guidance by the Inland Revenue in *IR283 Private Residence Relief*, the disposal of a garden or grounds, which include "any enclosed land surrounding or attached to your dwelling-house," may qualify for full relief from capital gains tax provided that it does not exceed 0.5 hectares in size. Gardens exceeding this size may be eligible for partial relief. To the extent that Private Residence Relief was intended to ensure that individuals would not be taxed on what was seen as an essential asset—their main house for dwelling—it should not be perverted to allow for the sale of gardens, which are clearly seen as non-essential to anyone selling them off. In other words, the very choice to sell off all or part of a garden should signal a fortification of the essential tax relief provided by the PPR. To this end, YHACS would propose eliminating the allowance for CGT relief for the sale of gardens.

V.3 Strengthening of Local Authority Discretion in Planning Decisions

Finally, and most importantly, YHACS proposes that Government reinvigorate the discretion of local planning authorities more generally, to ensure that they are able to refuse planning permission to high-density schemes where inappropriate for the local area.

V.3.1 First, YHACS would recommend that the stringency of central government, and by extension those targets set by Regional Development Agencies as expressed in the Regional Spatial Strategies (RSSs), be relaxed, such that local planning authorities make the decision as to the proportion of brownfield development and the level of housing density which is feasible. The knowledge of the local area which is possessed at local level is indispensable to the determination of such figures.

V.3.2 To this end, YHACS proposes the revision of PPS 3 to include an explicit statement that gives ultimate discretion over the setting of housing density and brownfield development targets to local authorities.

VI. CONCLUDING REMARKS

VI.1 YHACS is concerned that the combination of current planning policy guidance, the barriers to genuine brownfield development and the system of local planning authority, encourages high-density developments to the detriment of the character and ecology of our local communities. As such, we are advocating the above actions as a solution to redress the problem and re-establish what we refer to as the "green/built balance" —a sustainable proportion of natural to built environment in our cities, towns and villages. This re-balance, we believe, should involve local communities in determining what is appropriate for their local

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areas, which would reinvigorate the ownership that individuals have over the destinies of the places in which they live, work and play.

VII. APPENDIX A: Examples of Garden-grabbing

(1) Amberley, West Sussex, a small idyllic village on the bend of the River Arun, is an ancient settlement with a Grade I-listed, 900-year-old castle, a church of which parts date to Norman times, and a lane of thatched and stone cottages. The developer English Courtyards recently acquired the local vicarage, and has applied to build six luxury homes in the garden, which happens to sit in near proximity of Amberley Castle. The proposed development is in a conservation area. However, the community is divided over the proposed development. When the Church Commissioners put the church up for sale two years ago, there was widespread opposition to further development on the site, particularly from residents and the Amberley Society. The vicar, however, who has since moved to a new smaller vicarage now supports the development after developers agreed to provide extra parking at the church, and he believes that new homes will benefit some local residents. The parish council has also written a letter of support of the development, despite the lack of public consultation over the issue. According to previous surveys of local residents, there is widespread opposition to development in that part of the village.²⁷

(2) In Poole, Dorset, a developer is trying to buy an entire street of bungalows to redevelop the homes and their gardens. The developer is offering residents £100,000 over the market price of their homes, causing some to give in and want to sell, while others insist on staying. The result has been a “near riot” in the local area.²⁸

(3) In Chawton, a Hampshire village, a developer has applied to knock down three houses and put 25 in their place. After reducing the number to 15 new dwellings, the plan has been approved, making a rather dramatic impact in the village that currently has only 100 homes, limited access and infrastructure.

²⁷ Woods, Richard (2006). Battle lines are drawn. *The Sunday Times*. 8 October 2006. Access: The Times Online, <http://www.timesonline.co.uk/article/0,,2098-2389762.html>. Access date: 20 September 2006.

²⁸ Woods, Richard (2006). Battle lines are drawn. *The Sunday Times*. 8 October 2006. Access: The Times Online, <http://www.timesonline.co.uk/article/0,,2098-2389762.html>. Access date: 20 September 2006.

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