

ADVICE NOTE

NATIONAL PLANNING POLICY FRAMEWORK & LEVELLING UP AND REGENERATION BILL

FEBRUARY 2023

INTRODUCTION

The Government is consulting on proposed changes to the National Planning Policy Framework (NPPF) and the Levelling Up & Regeneration Bill (LURB) is currently passing through Parliament. It expects to publish the new NPPF and enact the LURB in spring 2023, but there are further changes to the NPPF proposed by the end of the year.

This advice note highlights proposals in them both that directly affect neighbourhood planning, as well as some others that may have a significant indirect effect. Clients are advised to review as well the more general commentary on the proposals and their context to gain a rounded picture of the current and future structure of the planning system.

NPPF (CONSULTATION VERSION)

The changes have been presented as relatively few modifications to the current (2021) NPPF, together with an accompanying consultation paper (which also explains some of the LURB provisions relating to planning). The consultation period ends on 2 March 2023. Note: where paragraphs (§) are referred to below, the new § number of the consultation document is used.

§11 Presumption in favour of sustainable development

It is proposed to make Local Plan making easier in addressing how housing need is met by allowing Local Planning Authorities (LPA) to argue that full needs cannot be met without harming local character as defined by an adopted design code or guide. §135 later reinforces the use of 'local design codes' to assess development proposals.

Insight – this is an encouragement for NPs to include a design guide or code. We support this.

§35/61/62/75/77 Housing supply

In meeting housing need, the combination of these changes allows LPAs more leeway to determine that figure in a number of technical ways (e.g. the removal of buffers to take account of past under-supply). They also effectively remove the need for an LPA to continually demonstrate a five year supply of housing land if they have an up to date Local Plan.

Insight – this may make it easier and quicker for an LPA to provide a QB with a meaningful indicative housing figure that remains in place, more or less, through Local Plan consultation, examination and adoption process. Or it might not ...! We tentatively support this but only if it does succeed in incentivising speedier Local Plan making.

§14 Neighbourhood plans in the tilted balance

It is proposed that made NPs that have met their housing needs shall have greater weight in the tilted balance in determining housing proposals (as per existing §14), but for five instead of two years and with the removal of the caveat for the LPA to demonstrate a three year supply of housing land and of the housing delivery test caveat.

Insight – common sense prevails! There was never a logic to either making this provision for only two years, to lower the land supply caveat or to caveat it on the housing delivery test. This places an even greater premium on NPs allocating housing land to secure this benefit, noting that §14 does not replace the tilted balance – it never did – but has the effect of re-tilting it back in favour of the plan-led (NP) system. As ever, QBs need to ensure their LPAs understand how §14 operates. We strongly support this.

§63 Housing Needs

It is proposed to add a specific reference to the need to plan for ‘retirement housing, housing-with-care and care homes’ in establishing housing needs. It operates with §61 that relates only to strategic policy (i.e. Local Plans), but could be expected to send a signal to NPs planning for housing needs either through site allocations and/or housing mix policies.

Insight – this is already considered in the Housing Needs Assessment reports being produced for QBs through Locality but it may be that it will become more important for NPs to make specific provision. Unfortunately, there continues to be no recognition that in many rural areas, there is a concern that planning for more such housing in towns and villages that are already aging fast, with a healthy supply of these homes, want to slow that trend, not plan to meet it. We support the addition but will again ask for a national policy steer for those communities wishing to tackle the demographic downside.

§80 Rural housing

It is proposed to add a specific reference to planning policies supporting proposals from ‘community-led housing groups’ in rural areas and to define that term in the NPPF glossary. Strangely, §73 has not been updated to replace the ‘entry-level’ affordable housing for sale product with the new ‘First Homes’ product, which remains a separate national policy.

Insight – some NPs already refer to this source of housing delivery but have not yet been able to specify it as a policy requirement, where justified. This may help Community Land Trusts etc win more planning permissions, and NP policies wanting to favour this type of housing model. We support this. The First Homes omission is odd indeed.

§122 Mansard Roofs

Clause E adds a reference to this particular roof form as a way of extending roof space, where such a design ‘harmonises with the original building’.

Insight – design codes in NP areas should determine in which parts of the NP area this type of roof extension is suitable (and by definition, where not). We have no view on this.

§142 Green Belt reviews

It is proposed to steer LPAs in the Green Belt away from arguing for land releases solely to meet housing needs, i.e. this in itself is not an exceptional circumstance to justify modifying Green Belt boundaries in Local Plan reviews.

Insight – for NPs in the Green Belt wanting to consider if and how to modify a boundary to allow for some housing site allocations – and there have been plenty of them in our experience – this proposal in effect takes that option off the table. Such boundary changes can only be made in an NP where the Local Plan has provided a policy hook on the back of §142. We are concerned about its consequences for good spatial planning and continue to ask for NPs to be able to modify Green Belt boundaries if they have good reason, without the need for a Local Plan policy.

§160 Wind energy

It is proposed to add a new footnote 62 and to add to footnote 63 mechanisms to allow Neighbourhood Development Orders and supplementary planning documents to grant permission for, or to identify suitable land for respectively, wind energy developments.

Insight – the changes make little difference to NPs, which have been able to use the existing provisions of §157/158 to identify suitable land for wind energy. Although very rarely taken up to date, we perceive the renewed political debate, and increasing interest in tackling climate change with local action, may encourage more NPs to take this on. However, the data sets are still patchy. We support this.

§178 Agricultural land

It is proposed to add a specific reference to agricultural land to footnote 67 to this paragraph, with the intention of restating the value of the ‘best and most versatile’ (‘BMV’) agricultural land as a measure in site assessments for plan making.

Insight – this measure has always been one that an SA/SEA will include, despite the limitations of the data sets (especially in respect of distinguishing the 3A and 3B classifications). QBs can already consider the weight they wish to attach to the measure alongside others, but perhaps this may encourage a greater weighting in the balance is warranted in some places in future. We support this.

§225 Transition arrangements

It is very difficult to decipher exactly what is proposed for NPs – even the Local Plan provisions are complex although intended to encourage more such plans to come forward now. On the face of it, the clear §223 provision relating to Local Plans and NPs has not been updated in §225 or §226, suggesting that the proposals will come into force quickly with no transition arrangement for NPs.

Insight – in practice, most of the proposed changes affect development management decisions, rather than NP plan making. The lack of a transition period, which may influence the timing of a submitting an NP for examination, does not therefore seem to be a problem of the kind that §223 in 2018 had to anticipate. We remain confused by this!

NPPF (NEXT ITERATION)

In bullet 8 of Chapter 1 of the accompanying consultation document, it states that:

“Alongside these specific changes, this document calls for views on a wider range of proposals, particularly focused on making sure the planning system capitalises on opportunities to support the natural environment, respond to climate change and deliver on levelling up of economic opportunity, and signals areas that we expect to consider in the context of a wider review of the Framework to follow Royal Assent of the Bill. The government will consult on the detail of these wider changes (in 2023), reflecting responses to this consultation.”

Insight – the 2021 NPPF followed on quickly from its 2019 iteration of the 2018 version that made some significant changes to the original 2012 version. Those iterations contained relatively few changes although some had real substance. The next NPPF has many more policy challenges to grapple with – climate change, economic development, town centres, local nature recovery to name but a few – that have been skirted around this time. As ever, QBs need to keep their national policy radars maintained!

LURB

The proposed and next iteration of NPPF changes must be seen within the broader legal framework of the Bill, the most recent version of which dates from 13 December 2022. Both the NPPF and LURB have been intended to respond to the political ‘heat’ caused by a number of Conservative MPs across a range of planning issues late last year.

The key provisions relating to NPs at present are:

- Removing the 'general conformity with the Local Plan' basic condition and replacing it with a new condition related only to testing if an NP "would not result in the development plan for the area of the authority proposing that less housing is provided by means of development taking place in that area than if the neighbourhood development plan were not to be made" (see S92(2))
- Adding a new basic condition relating to the proposed Environmental Outcome Reports (ditto and see below)
- Establishing the legitimate content of an NP, based on existing custom and practice but with an additional requirement that "the plan must be designed to secure that the development and use of land in the neighbourhood area contribute to the mitigation of, and adaption to, climate change" (S91)
- Confirming that an NP forms part of the 'development plan' (S85(3))
- Confirming that a National Development Management Policy (NDMP) also forms part of the 'development plan' (S86(2) – see below) and providing the SoS with the remit to define what should form NDMP (S87)
- Requiring that NPs "must not be inconsistent with or (in substance) repeat any NDMP" (S91(3))
- Replacing the 2004 SEA Regulations requirements with Environmental Outcome Reports (EOR) of a similar intent and approach (including reasonable alternatives and mitigation measures) – the future of the Habitats Regulations regime is uncertain at present

Insight 1 – the first point could make a very real and positive difference to NPs, many of which have seen the 'general conformity' condition as the most common obstacle used by LPAs to prevent innovation in local area policy. The term has been far too literally interpreted and few LPAs or examiners have understood the case law and how to judge this properly. The replacement – to ensure NPs do not seek to undermine existing housing supply – is a solution looking for a problem, and is again a symptom of a lack of understanding of neighbourhood planning.

Insight 2 – the NDMP provisions have drawn considerable criticism. We too are concerned that the Bill places considerable discretion in the hands of the SoS to determine the scope, depth and application of these policies. But generally we support the principle, which should speed up Local Plan making and support our advice to NP teams to avoid repeating national policies. And the provisions do allow for local refinement, which should be much easier to argue and evidence in NPs than in Local Plans.

Insight 3 – the EOR regime seems very similar to the SA/SEA system it will replace. It is crucial in our view that the Government takes the opportunity to introduce new guidance for LPAs and statutory bodies to raise the screening threshold at which EORs become necessary for NPs, even for NPs making site allocations. What should have been a rare exception for NPs to need SEA has become the risk averse LPA norm, with huge amounts of time, effort and money wasted as a result.

There are other proposals that may have some effect on NPs:

- Council Tax payable on second homes (§76)
- street votes (§99)
- the ability of an LPA to decline applications from persons considered to have a record of not implementing past planning permissions (§105)
- a requirement for LPAs to condition a development progress report from an applicant once permission has been granted (§106)
- consolidating the Localism Act provisions requiring communities to be consulted at the pre-application stage (§114)
- a new duty on LPAs to grant sufficient planning permissions for self-build homes (§115)
- the replacement of the Community Infrastructure Levy (CIL) and §106 planning obligations with an Infrastructure Levy (IL) set at local charging rates (§124) and requiring LPAs to prepare Infrastructure Delivery Strategies
- piloting community land auctions (§127) in the site allocation process but only for LPAs not QBs
- measures to require water companies to upgrade sewage facilities to address nutrient pollution problems by 2030 (§153)
- provisions for LPAs to take over vacant high street premises for reuse (§176)
- a new registration system for short-term rental properties ('AirBnB') and the potential for a change to the Use Class Order to distinguish such properties from primary residence dwellings (§210)
- provisions for Neighbourhood Priority Statements, Local Plan making, design coding and the replacement of existing Supplementary Planning Documents with Supplementary Plans (Schedule 7)

Insight 4 – these changes are generally welcome and may help some NPs tackle policy issues more effectively in the future. The Neighbourhood Priority Statements and Street Votes may have some value, notably in urban areas, but are no substitute at all for NPs in our view. This time a solution to a mis-diagnosed problem.

SUMMARY

The proposals for neighbourhood planning are generally very positive, especially considering the lack of attention it received in the Planning White Paper in summer 2020. But, the Government and the planning profession continue to see it as peripheral to the wider changes aimed at speeding up Local Plan making to regain the currency of the planned system.

The changes to Local Plans have been criticised by some outside of local government as 'better any plan than no plan at all'. We would counter that with an observation of the years since the 2012 NPPF as 'better any development than no development at all' that have created much of communities' distrust of the planning system and their dislike of too many of its outcomes.

We, on the other hand, have been convinced by years of neighbourhood planning to see it as the antidote to both these malaises. Communities have proved time and again that despite its faults, and the challenges presented by many of the players in the game, neighbourhood planning can be used to manage change positively. We see no future of speedy Local Plan making and better community engagement in the system without more widespread and effective neighbourhood planning.

We will be making this wider point in our NPPF consultation response.