

# The NPPF six years on

*Rachael Herbert considers the main proposed changes in the draft NPPF and whether these will be sufficient to deal with the housing crisis*



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**'The government's manifesto promise to protect the green belt has not been abandoned in the draft NPPF despite the urgent need to boost the delivery of new housing. In fact, it could even be argued that the government has increased the overall protection afforded to the green belt.'**

On 5 March 2018 the Ministry of Housing, Communities and Local Government published a revised text of the National Planning Policy Framework (the draft NPPF) alongside a raft of other supporting documents, government responses and further consultations (see box on p17), including the revised Planning Practice Guidance text. The consultation period for the draft NPPF concludes on 10 May 2018. The government has said that it intends to publish the final version of the NPPF 'before the summer', indicating that few changes are expected to be made as a result of the consultation.

The draft NPPF has been described by the government as 'a major overhaul' to the existing Framework. In his launch speech the Secretary of State for Housing, Communities and Local Government, Sajid Javid, said that the draft NPPF will 'set out a bold, comprehensive approach for building more homes, more quickly, in the places people want to live' ([www.legalease.co.uk/javid-nppf](http://www.legalease.co.uk/javid-nppf)).

This article focuses on the failings of the existing NPPF in the context of the current housing crisis, the key changes being proposed in the draft NPPF and whether these will be enough to 'fix our broken housing market' and increase the delivery of new homes to the required 300,000 per year.

## Background

The Framework was first introduced in 2012. Since then it has not been formally amended, despite some ten written ministerial statements having emerged to sit alongside it. There is little in the draft NPPF which comes as a surprise. It is slightly smaller

in length (pages) than the original Framework, and while much remains the same – the presumption in favour of development is still at the heart of the Framework – changes have been made to incorporate:

- a number of policy proposals on which the government has previously consulted (see box on p17);
- the changes purportedly implemented through the ten written ministerial statements;
- the decisions of the court since 2012 on the meaning of various paragraphs in the Framework;
- additional proposals announced as part of the Budget 2017; and
- improvements to the text to improve coherence and reduce duplication.

## The key failings of the Framework

While most of the interpretation issues concerning the meaning of specific paragraphs in the Framework have since been resolved through the courts, the effectiveness of the planning system is plagued by a number of alleged deficiencies in the Framework. It is commonly argued that the following key failings in the Framework impede the delivery of housing:

- The wording of para 14 – the presumption in favour of sustainable development – allows a local planning authority (LPA) to not plan to meet the full needs for market and affordable housing, but rather a

lower (constrained) figure, if there is a specific policy (eg green belt) which can be relied upon as justification for restricting development in those areas. Despite there being a significant under-delivery of housing, the need for housing does not necessarily override other policy constraints concerning the use of land even if an LPA would, without use of the constrained land, be unable to meet its full market needs. In an effort to combat this, the current Framework encourages LPAs to ‘cooperate’ with neighbouring LPAs and see if those neighbours would be willing to plan for and accommodate their housing shortfall.

- The ‘duty to cooperate’ does not go far enough to force neighbouring LPAs to cooperatively plan to ensure that the full and collective housing needs of it and its neighbouring LPAs (together a ‘strategic housing market area’) are met. At present, the duty operates as a duty to consult only, with rarely anything being agreed on how the housing targets of the strategic housing market area can be shared and met in full, resulting in an undersupply of housing. For example, a release of green belt land to meet a neighbouring LPA’s housing targets is a political ‘hard sell’ that will rarely occur without an incentive to do so.
- The absence of guidance on issues such as how to objectively assess housing needs has served to encourage ‘localist interpretations’, which gives rise to inconsistency and inappropriate methodologies and assumptions. The lack of a consistent approach has often led to delays in plan preparation and grounds for challenge at local plan examinations.
- There is currently no duty on LPAs to prepare local plans and as at April 2017 43% had yet to even publish a draft local plan ready for submission to government (Lichfields insight paper (April 2017): *Planned and delivered – Local Plan-making under the NPPF: A five-year progress report*). In some areas, this has led to ‘planning by appeal’, where schemes are refused planning permission by the LPA only to be granted permission on appeal. The failure to have an up-to-date

plan renders an LPA vulnerable to housing appeals and inappropriate development. In addition, out-of-date plans do not provide developers and investors with the requisite certainty to promote development.

- A stalled or protracted appeal system does not encourage LPAs to prepare

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and adopt local plans as it takes more than 12 months for an appeal against a refusal to be heard and determined.

- The Framework encourages the use of previously developed land, but stops short of a ‘brownfield first’ policy and says little on what an LPA should do to promote the effective use of this land.
- Development in the green belt will only be permitted in exceptional circumstances and housing needs alone are insufficient to tip the balance in favour of the grant of permission.
- There is no requirement for an LPA (alone or together with its neighbours) to undertake a strategic review of its green belt as part of the plan-making process, even if it is clear that a green belt release is the only means of planning to meet full housing needs and would result in the most sustainable outcome.
- There is no requirement for LPAs to monitor progress in the building-out of sites and act to correct in the event of under-delivery.
- There is no requirement for spatial and joint infrastructure planning.

**Changes proposed by the draft NPPF**

With these failings as context, do the changes in the draft NPPF do enough to correct many of the existing failings

and drive the delivery of new homes in England?

In broad terms, the chief changes focused on the delivery of more homes can be categorised into the following four areas:

- measures to diversify the housing offer to improve absorption rates;

- measures to speed up the delivery of plan-making;
- measures to maximise the use of existing land; and
- measures to increase housing delivery.

**Measures to diversify the housing offer to improve absorption rates**

The draft NPPF:

- continues the requirement for development plan policies to set out the size, type and tenures of homes required for different groups in the community, including affordable housing, and makes it clear that affordable housing is, in the main, to be provided on-site. Notably, the draft NPPF goes further in relation to the provision of affordable housing and requires that developments of ten dwellings or more are to have at least 10% of the total number of homes available for affordable homes ownership, subject to some exceptions, such as build-to-rent schemes;
- encourages a mix of housing options within a development, particularly build-to-rent elements. It does so by extending the definition of affordable housing to cover affordable rent at 20% below local market rents or in accordance with government rent policy, build-to-rent schemes, starter homes, discounted market housing and other:

... housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market.

Notably, the previous emphasis on starter homes being the solution to the home ownership issue has been diluted through the new definition of affordable housing;

*The quantum of housing need and its distribution is to be established between neighbouring LPAs through a requirement to provide a statement of common ground.*

- seeks to support the development of small sites by requiring at least 20% of all sites identified for housing in local plans to be half a hectare or less. This proposal is designed to increase the number of small to medium developers operating in the housing market;
- encourages LPAs to support entry-level exception sites which are suitable for first-time buyers/renters unless this need is already being met;
- states that LPAs should support opportunities to bring forward rural exception sites which provide affordable housing and consider allowing some market housing to support it; and
- requires LPAs to identify larger-scale development opportunities for new settlements and extensions to existing villages.

Sir Oliver Letwin’s interim report to Philip Hammond, Chancellor of the Exchequer, and to Sajid Javid, on the building-out of planning permissions into homes ([www.legalease.co.uk/letwin](http://www.legalease.co.uk/letwin)), suggests that the ‘absorption rate’, ie the rate at which newly constructed homes can be sold into the local market without materially disturbing the market price, is largely determined by the type of home being constructed (when ‘type’ includes size, design, context and tenure) and the pricing of those homes, with a

homogenous offer from large house-builders resulting in low absorption rates. His investigation into large sites reveals that differences in type are critical to creating additional demand – and hence additional absorption, leading to a higher build-out. Based on these initial findings, all of the above suggestions to diversify the housing offer should be welcomed.

Notwithstanding this, the draft NPPF could be further improved to make clear that:

- LPAs have a role to play as housebuilders and should seek to maximise the density of their existing housing stock (through estate regeneration and bringing forward underutilised land, either individually or through joint venture arrangements with private developers);
- social rent has not been abandoned and the ambition to deliver inclusive and mixed communities has not been abandoned; and
- opportunities for sustainable new garden towns should also be considered.

**Measures to speed up the delivery of plan-making**

The draft NPPF:

- allows individual authorities or joint authorities to prepare development plans which deal only with strategic matters (referred to as ‘strategic plans’), leaving local policies to be dealt with in subsequent plans (for example, delivered as a part of a neighbourhood plan, where appropriate);
- introduces a new standardised approach to assessing housing needs which must be used by an LPA unless ‘exceptional circumstances’

exist. The calculation under this methodology is to include the unmet needs in neighbouring LPAs;

- requires plans to provide for the objectively assessed needs (OANs) of development, including unmet needs in neighbouring areas, ‘unless particular policies provide a strong reason for restricting the overall scale, type or distribution of development’ (para 11 of the draft NPPF). The quantum of housing need and its distribution is to be established between neighbouring LPAs through a requirement to provide a statement of common ground (SoCG). The SoCG will replace the existing duty to cooperate and is needed to satisfy the ‘effectiveness’ limb of the soundness test. The detail on what the SoCG must include is to be set out in future regulations but is expected to deal with strategic cross-boundary issues such as housing and infrastructure and to state what is agreed and not agreed in terms of housing requirements and distribution;
- sets out a list of the specific policies that provide a strong reason for restricting development, with ancient woodlands and aged or veteran trees (but not valued landscapes and severe traffic impacts) being new additions to the list;
- introduces the requirement that local authorities ‘review’ plan policies at least once every five years. Significantly, the review does not need to result in any change to the planning policies, and provided it is undertaken, the plan is to be considered up to date;
- amends the tests for a ‘sound’ local plan so that the plan is no longer required to be ‘the most appropriate strategy’ but rather ‘an appropriate strategy’ (para 36 of the draft NPPF);
- introduces a requirement for development plans to clearly state the developer contributions required from a particular site and types of development envisaged. The expected contributions are not to make development unviable and must be supported by viability assessments for the key sites/

allocations, so that development proposals which accord 'with all the relevant policies in an up-to-date development plan' need not submit a viability assessment. This introduces a fundamental shift towards focusing viability assessments at the plan-making stage rather than the decision-making stage;

- clarifies that green belt boundaries can only be amended in 'exceptional circumstances' through strategic policies in a development plan and when local authorities 'have fully examined all other reasonable options for meeting [their] identified needs for development'. Reasonable options are said to include consideration of whether the strategy 'makes as much use as possible' of suitable brownfield sites and underutilised land, optimises density of development, and demonstrates discussion with neighbouring authorities about unmet needs accommodation (through the SoCG) (para 136 of the draft NPPF);
- states that strategic plans should set out a housing requirement figure for neighbourhood areas and this should not need retesting at neighbourhood plan examinations;
- states that only a three-year supply of deliverable housing sites needs to be identified (against its five-year target) if a recent neighbourhood plan identifies sites for housing and housing delivery has been at least 45% of that required over the previous three years; and
- requires a new 10% buffer to be applied if a (para 74(b) of the draft NPPF):
  - ... local planning authority wishes to demonstrate a five-year supply of deliverable sites through an annual position statement or recently adopted plan.

While likely to lead to the adoption of 'strategic plans' more quickly and an increase in localism generally, through neighbourhood plans having greater prominence, some of these plan-making changes will result in negative consequences, including the following:

- The lowering of the threshold to 'an appropriate strategy' means that virtually all local plans should pass the soundness test at examination, irrespective of the strategy put forward and how appropriate it is. This will mean that competitor site challenges at local plan examination are less likely to succeed and that the most sustainable strategy need not be pursued by an LPA, particularly if that would mean a green belt rollback.
- Policies should be reviewed every five years but the plan does not automatically become out of date after five years – less clear than the current Framework about the presumption applying.
- The standardised approach to assessing housing needs is not suitable for certain LPA areas. That said, it is accepted that some exemptions are allowed and that the benefits of a simpler, quicker and more transparent assessment override the negatives that come with a standard methodology.

**Measures to maximise the use of existing land**

The draft NPPF:

- states that strategic plans should have a clear strategy for accommodating objectively-assessed needs, in a way that makes as much use as possible of previous development or brownfield land, except where this would conflict with other policies in the Framework;
- introduces a 'brownfield-first test', requiring LPAs to give significant weight to the value of using suitable brownfield land when deciding a planning application;
- promotes higher-density housing in accessible locations by requiring LPAs to set minimum density standards for city and town centres and other locations well served by public transport. There is no prescribed density figure but the draft NPPF (para 123(a)) requires LPAs to seek 'a significant uplift' in the average density of residential development in these areas unless

there are 'strong reasons why this would be inappropriate';

- requires LPAs to refuse applications that fail to make efficient use of the relevant land, taking into account the policies in the Framework;
- requires LPAs to take a flexible approach to policies or guidance relating to sunlight and daylight where a strict application would otherwise inhibit the efficient use of the site, as long as the resulting scheme provided appropriate living standards;
- requires LPAs to take a proactive role in identifying and helping to bring forward land that might be suitable for development, such as sites on the brownfield registers or held in public ownership, by utilising the full range of powers available to them eg compulsory purchase powers;
- requires LPAs to review their allocations and release redundant land for new housing;
- requires LPAs to consider where it would be appropriate to allow upward extensions to existing blocks of flats and houses as well as shops and offices, provided the extensions would be well designed and consistent with the prevailing height and form of neighbouring properties and overall street scene;
- requires LPAs to support appropriate opportunities to remediate contaminated and unstable land etc;
- requires LPAs to take a positive approach to applications for alternative uses of developed land if it would help to meet an identified need, eg use of retail and employment land for homes in areas of high housing demand if it would not undermine economic sectors or the vitality or viability of town centres; and
- introduces a requirement for planning policies to consider the social and economic benefits of estate regeneration and encourages LPAs to use their planning powers



to help deliver such, eg to exercise their compulsory purchase powers.

The government’s manifesto promise to protect the green belt has not been abandoned in the draft NPPF despite the urgent need to boost the delivery of new housing. In fact, it could even be argued that the government has increased the overall protection afforded

of housing. If an LPA fails to deliver at least:

- 25% of its required housing in the three years to November 2018;
- 45% of its required housing in the three years to November 2019; and/or

guidance (published alongside the revised draft), including standardised inputs, and should be made publicly available;

- encourages LPAs to consider whether they should impose a planning condition on permission to require development to start within a shorter timescale than the default period (or lapse);
- states that pre-commencement conditions are to be avoided unless there is clear justification for them; and
- encourages planning conditions to be kept to a minimum and agreed in advance.

*The draft NPPF encourages existing land to be maximised but does not make this mandatory.*

to the green belt by prioritising the development of brownfield sites through the introduction of the ‘brownfield-first test’. While all of the above measures to maximise existing land should be encouraged and could, collectively, result in a significant increase in the number of homes provided, whether this actually materialises is largely dependent on the resolve of each LPA. The draft NPPF encourages existing land to be maximised but does not make this mandatory, offering outs for each new measure. For example, the inclusion of the words ‘unless... there are strong reasons why this would be inappropriate’ (para 122(d) of the draft NPPF) and ‘consistent with the prevailing height and form’ (para 118(d) of the draft NPPF) could be relied upon by an LPA as justification for not maximising density.

**Measures to increase housing delivery**  
The draft NPPF:

- states that the presumption in favour of sustainable development will be triggered where a council cannot demonstrate a five-year housing supply or delivery has been substantially below the housing requirement over the previous three years;
- includes a mechanism for allowing the five-year supply position to be fixed for a one-year period, subject to a 10% buffer being applied to its housing requirement;
- introduces a new housing delivery test to ensure LPAs are held accountable for the undersupply

- 75% of its required housing in the three years preceding November 2020 and subsequent years,

the presumption in favour of sustainable development will be triggered and planning applications will then be judged against the Framework instead of the local plan;

- requires an LPA currently to monitor progress in the building-out of sites which have permission, to prepare action plans to assess causes of under-delivery and to identify actions to increase delivery, where the housing delivery test indicates that delivery has fallen below 95% of the housing requirement over the previous three years;
- states that refusal on the grounds of prematurity is unlikely to be justified unless the effect of the development would undermine emerging plan policies and the plan is at an advanced stage (ie submitted for examination) but not yet adopted;
- implements the reforms to viability assessment proposed in the *Planning for the right homes in the right places* consultation and makes it clear that where a proposed development accords with all relevant policies in the plan there is no need for a viability assessment to accompany the planning application. If a viability assessment is needed (plans should set out when the use of viability review mechanisms may be required eg on unallocated sites), it should reflect the recommended approach set out in the national planning

The shift in focus from the number of homes planned to those actually delivered is, on its face, a positive change. However, it is highly questionable whether a housing delivery test is the most effective way to boost housing delivery, particularly with such low thresholds, ie only 75% after a three-year staggered phase-in. The undersupply of housing could reach extreme levels over the next three years, assuming the proposed triggers are accepted – for example, housing delivery needs to only be a little over 25% in the three years to November 2018 and 45% in the year to November 2019 before the 75% trigger in 2020. Instead of trying to correct a persistent undersupply after the fact, a more logical and radical change would be for the draft NPPF to require local plans to make a further allowance, equivalent to 20% of the housing requirements, in developable reserve sites, to provide extra flexibility to respond to change and/or address any under-delivery through the release of the reserve sites. This should also have been supported by a short-form process for deallocating sites and revoking consents for sites that do not come forward, and a strong emphasis on the use of compulsory purchase order (CPO) powers to acquire sites that are not being progressed. This approach would mean that LPAs are not penalised for the slow build-out rate of developers (despite having little control over such) and would give them the political mandate to plan for a more ambitious (20% higher) housing target, considering growth beyond the plan period.

While the suggestions concerning development conditions are more a restatement of best practice than anything radical (ie an LPA has always had the power to impose shorter commencement timeframes), the reference to such in the draft NPPF should serve as a reminder to LPAs and, presumably, help to make early delivery a joint motivation.

The reforms to the viability assessment process are long overdue and very welcome. It means that there should be less challenge at application stage and helps to make it clear that prices should reflect policies rather than vice versa.

### Remaining deficiencies

Despite having proclaimed that the draft NPPF was an ‘overhaul’ of the Framework, a review of the report published by the Local Plans Expert Group (see: <http://lpeg.org/>) indicates that only 13 of 47 recommendations have been taken up in the draft NPPF and its accompanying guidance, with a further 11 taken up in part.

In addition to flaws already outlined, some of the key areas which the draft NPPF has failed to correct include:

- a requirement to plan to meet the OAN unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. While there has been a slight change to the presumption in favour of sustainable development to plan to meet any unmet need from neighbouring LPAs, the requirement remains essentially the same because the draft NPPF still enables a plan to be found ‘sound’ despite not meeting the full OAN if a specific policy ‘provides a strong reason’ not to do so. This means that constrained LPAs can continue to allocate insufficient land to meet their OANs;
- the green belt provisions remain very strong and provide no clarification on when an LPA should, if ever, undertake a comprehensive review of its green belt as part of its plan preparation. The current text only addresses what needs to be done by an LPA to justify a release of part of its green belt, assuming that an LPA has first decided that it is appropriate to do so;

- the duty-to-cooperate issues have not been properly addressed despite a SoCG now being required. The SoCG does not require agreement on how the full housing requirements of the strategic housing market area are to be distributed and provided for, but instead a record on what has (and has not) been agreed in relation to this and other strategic matters;
- there is no statutory duty to prepare a strategic plan nor penalty for an LPA failing to adopt a local plan or keeping it up to date (aside from the presumption being triggered). However, instead of more punitive intervention it would be far more productive for the government to create financial incentives to stimulate efficient and effective plan-making, or establish specialist departments which could aid LPAs short on resources or expertise with plan-making functions and/or carrying out the more politically sensitive aspects of plan-making (for example, to prepare viability evidence or undertake strategic market assessments and green belt reviews); and
- there being no changes which seek to address the length of time it takes

to move through the appeal system, despite the government suggesting that this will be addressed as part of further reforms later in the year. That said, ‘planning by appeal’ is an ineffective way to promote strategic growth or housing, and is, for obvious reasons, perceived negatively by local communities.

### Conclusion

The draft NPPF makes some limited progress in addressing the weaknesses in the original draft. It is no overhaul of the planning system, but more a simplification of the plan-making process and an encouragement of build-to-rent schemes and the more efficient use of brownfield land. That said, the changes it does make are, mostly, helpful improvements which should be included in the final version. However, more can and should be done to boost the supply of housing in England. Given the Parliamentary time constraints on account of Brexit, it seems unlikely that there will be any radical proposals for reform brought forward later this year. Perhaps that is a good thing and will allow the government time to build up the courage needed to properly address some of the more politically sensitive issues, such as appropriate development on the green belt. ■

## References

### Documents provided with the revised NPPF

*Draft planning practice guidance*

Government responses to the housing white paper and the *Planning for the Right Homes in the Right Places* consultations

*Housing Delivery Test: draft measurement rule book*

*Section 106 planning obligations and the Community Infrastructure Levy in England, 2016 to 2017: report of study*

*Supporting housing delivery through developer contributions*

### Policy proposals previously consulted on by the government

*Planning and Affordable Housing for Build to Rent – a consultation paper* (February 2017)

*Planning for the right homes in the right places: consultation proposals* (September 2017)

The housing white paper: *Fixing our broken housing market* (February 2017)

*The National Planning Policy: consultation on proposed changes* (2015)