

The NPPF Consultation

Planning Potential's Coffee Briefing...

By now you'll have most likely seen the consultation on the NPPF. You may have reviewed the helpful tracked change version or even read the full consultation itself (if you have the hours spare). Having read opinion pieces, legal blogs and engaged fellow professionals on the changes, we thought we'd summarise the proposed changes, consider the implications and wistfully look to the future.

Introduction

The Framework's updated paragraph 1 prioritises the preparation and maintenance of up-to-date development plans – nothing wrong with that. Yet the proposed amendments to paragraph 11 - the presumption in favour of sustainable development - essentially water down the “tilted balance” and the requirement to maintain an adequate housing supply and meet housing delivery targets. Ultimately, the direction is for decision-making to be ‘more’ plan-led (Levelling Up and Regeneration Bill [LURB] to give more weight to adopted plans), and generally reduce how often the presumption in favour of sustainable development is applied. In reality, authorities with up-to-date local plans aren't typically the authorities where the titled balance came in to play so often anyway. Where authorities don't have up-to-date Local Plans, the titled balance is to be used in the same way as before.

Achieving sustainable development

For plan-making, the text to paragraph 11b is amended to recognise that objectively assessed needs for housing and other needs do not have to be met if this requires building at densities significantly out of character with the existing area, whereby the adverse impacts would significantly and demonstrably outweigh the benefits. This is a disappointing addition to the NPPF and doesn't strike us as aligning with the ambition to solve the housing crisis. In a similar manner, an additional clause is proposed to 11b which allows evidence of past over-delivery to be considered in terms of the extent to which objectively assessed needs are planned for in local plans.

Crucially, footnote 11 – which governs the application of the titled balance – has been significantly softened, placing a firm incentive on LPAs getting an up-to-date plan in place, and then maintaining it. Relevant planning policies will only be found to be out-of-date where i) the local planning authority cannot demonstrate a five year supply of deliverable housing sites and the housing requirement set out in strategic policies is more than five years old (i.e. the local plan is more than five years old). ii) These strategic policies have been reviewed and found not to require updating. iii) The Housing Delivery Test

result is less than 75% over the previous three years (unless permissions have been granted for 115% of the housing requirement). There is no other way to describe this than a softening of the existing position. Quite stark in light of the aim to “significantly boosting the supply of homes” (paragraph 60).

Amendments to paragraph 14 are intended to give increased protection to neighbourhood plans. Clauses (c) and (d) are to be removed, meaning that the tilted balance would no longer be engaged if either the LPA was unable to demonstrate a three-year housing land supply; or the LPA could not demonstrate 45% delivery against its housing requirement over the previous three years. Under the amended paragraph 14, the adverse impact of allowing development that conflicts with a neighbourhood plan is likely to significantly outweigh the benefits if the neighbourhood plan is less than five years old when the decision is made; and contains policies and allocations to deliver housing. The five-year period for plans being considered up-to-date is a significant extension of the existing two-year period.

In summary, if you have a plan, be it Local or Neighbourhood, that is up-to-date, does it matter what you deliver?



Plan-making

A crucial amendment is the simplification of the soundness test for local plans and spatial development strategies at paragraph 35. Paragraph 35a is amended to remove the requirement for agreements with authorities to inform how objectively assessed needs are met. Further, the requirement for plans to be “justified” to meet the soundness test, is removed. This is designed to establish a more proportionate approach to plan examinations, and in turn, make it more straight-forward for authorities to prepare and maintain up-to-date plans. Coupled with the amendments at paragraph 11 and footnote 9, there is a clear incentive for authorities to take a more proactive approach to plan-making.

Housing Need

The Government’s objective of significantly boosting the supply of homes remains unchanged in paragraph 60. However, there is now an added emphasis that this objective should be met only in so far “as possible with an appropriate mix of housing types to meet the need of communities”. This appears to set the tone of the proposed revisions to this chapter from the outset.

In terms of assessing local housing need, the Government is not currently proposing any changes to the Standard Method formula for now. However, following the publication of the 2021 Census data, which is expected in 2024, a review will be undertaken to assess the implications on the Standard Method. Whilst the current NPPF does allow for deviation from the Standard Method, the consultation material proposes, in paragraph 61, with added emphasis that this is only an “advisory starting-point”. Further guidance is anticipated that will provide clear examples of when local characteristics may justify the use of an alternative method, but it is expected that this may include areas with a high percentage of elderly residents or those with a particularly high proportion of university students.

The consultation material in paragraph 62 also proposes to change the standard method for the 35% uplift, now expecting the largest urban areas to meet this uplift, except where there is voluntary cross-boundary agreement to do so would conflict with other policies in the

Framework.

It is positive to see the addition of footnote 30, bringing in a genuine brownfield first policy, which seeks for the prioritisation of brownfield and under-utilised urban sites; this will be governed by local design codes and masterplans.

In assessing housing need, the consultation material at paragraph 63 requires local authorities to take into account the need for retirement housing, housing-with-care and care homes when accounting for the needs of older people. In rural areas, policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs, including development proposals from community-led housing groups.

Five Year Housing Land Supply

The need for local authorities to update their Local Plan every five years (paragraph 75) is not new and is already set out in paragraph 33 of the NPPF. Therefore, in this regard, the consultation material is no different in its fundamentals to what is already required. However, ultimately, there is now an incentive for local authorities to keep their Local Plans up to date as by doing so they will avoid the need to provide a rolling five-year land supply; the need to provide a five-year land supply falls away on adoption of a Local Plan for five years from the date of adoption, when read alongside foot note 44. Thereby avoiding speculative development coming forward through the presumption in favour of sustainable development. Indeed, the concern is that the proposed removal of the requirement to continually demonstrate a five-year housing supply for the first five years will protect local plans that are failing off the blocks and could further constrain supply.

However, given the resource and funding issues, and the number of authorities which already fall foul of paragraph 33, it is questionable if this will actually change much in practice. Where local authorities are required to provide a five-year supply of deliverable sites, the proposed revisions clarify that calculations can now take into account any historic under or over-supply. This is something that the Framework has previously been silent on.



Housing Delivery Test

With regards to the Housing Delivery Test, paragraph 77 of the consultation material proposes to add in the detail currently set out with planning guidance and confirms that where delivery falls below 95% of the requirement over the previous three years, the authority should prepare an action plan. Where delivery falls below 75% of the requirement over the previous three years, the presumption in favour of sustainable development will also apply. However, as above, the need to provide a buffer on housing land supply where delivery currently falls below 85% will fall away. It is also worth highlighting that if the local authorities achieve a delivery rate of 115% (footnote 49) over the applicable Housing Delivery Test monitoring period, the presumption will not be triggered, although it is questionable as to whether this figure is the right one or whether it should be increased.

Rural Housing

Paragraph 80 introduces rural housing proposals from “community-led” housing groups. A new definition has been added for this in the Annex to the Framework

The effective use of land

The thrust for the redevelopment of brownfield land remains without amendment (paragraph 121). The preference for policies and decisions to make as much use as possible of previously developed land remains.

As a means to maximise opportunities above existing premises for new homes (paragraph 122(e)), there is a new reference to supporting mansard roofs subject to relevant material considerations such as impact on visual amenity. The accompanying consultation document asks for views on the specific reference to mansard roofs at question 36, and other opinions on how to increase densification/ creation of new homes. This seems a peculiar addition for a strategic policy document.

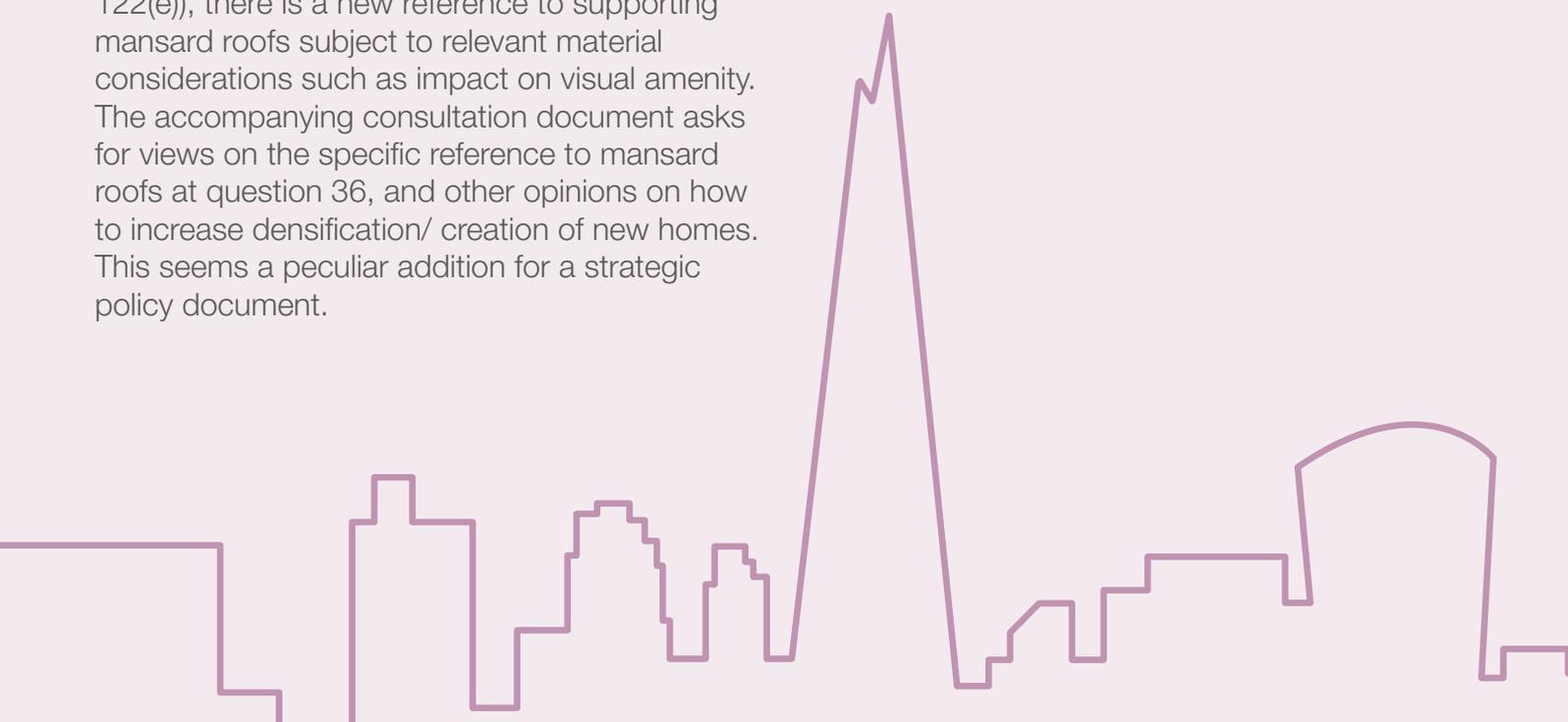
The inclusion of ‘and beautiful’ (paragraph 126(e)) when achieving appropriate densities is noted. This represents another bolstering on the emphasis for building beautiful that runs throughout the document.

Well-designed and beautiful places

The most significant change proposed to Chapter 12 is the proposed introduction of ‘... and beautiful...’ within the title of the chapter. This is arguably the strongest additional reference which serves to bolster the (increased) role that good design should have in planning. The concern with this is the subjective nature of what is ‘beautiful’. It remains the case that this decision ultimately sits with the decision maker.

Paragraph 135 has been added to, to include direct reference to the use of design codes as a means to assessing and improving the design of development.

Paragraph 137 has been amended to include ‘...ensure that relevant planning conditions refer to clear and accurate plans and drawings which provide visual clarity about the design of the development, and are clear about the approved use of materials where appropriate, to make enforcement easier...’. The text serves to give additional weight to the role planning conditions has in securing and enforcing good design.



Green Belt

Only one change has been made to the Green Belt Chapter of the NPPF. The addition of a single sentence does however appear to have significant consequences.

Paragraph 142 has been amended to add:

“Green Belt boundaries are not required to be reviewed and altered if this would be the only means of meeting the objectively assessed need for housing over the plan period.”

The addition of this sentence enables local planning authorities to justify not meeting their full objectively assessed housing need if constrained by Green Belt. The requirement to demonstrate exceptional circumstances to alter the Green Belt boundaries remains as before. However, given that historically the objectively assessed housing need has formed a large portion of Council advocated exceptional circumstance, without a requirement to alter Green Belt boundaries to address the objectively assessed need, the exceptional circumstances bar is undoubtedly heightened.

Furthermore, there is no change proposed to the ‘Very Special Circumstances’ (VSC) test.

Climate change, flooding and coastal change

The support given to renewable energy proposals has been strengthened further by the proposed changes to the NPPF. The addition of Paragraph 160c adds a further strand for whereby authorities should approve renewable sites. In paragraph 160c authorities are advised to “approve an application for the repowering and life-extension of existing renewables sites, where its impacts are or can be made acceptable”. The addition clarifies that the impacts should be assessed against the baseline of the existing site.

The introduction of Paragraph 161 gives significant weight to the support of energy efficiency improvements through the adaptation of existing buildings e.g. heat pumps and solar panels. The addition of paragraph 161 aligns with broader industry discussion relating to the benefit of re-using existing buildings as opposed to knock-down re-build on the grounds of carbon impact.

Footnotes 62 and 63 relay that wind energy development involving one

or more turbines can be granted through Local Development Orders, Neighbourhood Development Orders and Community Right to Build Orders if the planning impacts have been appropriately addressed and the proposal has community support.

The amendments to paragraph 160, 161 and the accompanying footnotes seek to simplify the process of securing permission for renewables, adding clarity and expanding upon, the already favourable stance.

Conserving and enhancing the natural environment

The alternative uses for agricultural land are given greater consideration through the introduction of a further footnote. Footnote 67 states that “The availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development.” The addition of this footnote is anticipated to add a further strand to the list of considerations assessed by the Council when determining the suitability of land for redevelopment. The ability to grow crops on land will now be a further consideration weighed against redevelopment proposals and applicants will need to justify the sites suitability for an alternative use if deemed suitable for agriculture.



Annexes

The Annexes are split into three parts with only two parts being proposed to be amended. This includes Annex 1 which relates to implementation and provides explanatory text and Annex 2, which provides a glossary and definitions. This part is even more complicated!

Paragraph 224 has been updated to state for the purposes of the policy on larger-scale development in paragraph 22, this applies only to plans that have not reached Regulation 19 stage at the point this previous version of this Framework was published on 20 July 2021.

Paragraphs 225 and 226 have been inserted and relate to the transitional arrangements. New paragraph 225 relates back to paragraph 35 and the tests for soundness and the policy on renewable and low carbon energy and heat in plans in paragraph 156. It states that policies apply only to plans that have not reached Regulation 19 (pre-submission) stage, or that reach this stage within three months, of the publication of this version. For GLA Strategies, this applies to plans that have not reached consultation under section 335(2) of the Greater London Authority Act 1999 or are within three months of reaching this stage. For all other plans, the policy contained in the corresponding paragraph in the July 2021 NPPF will apply.

New paragraph 226 states from the date of publication of this revision of the NPPF, for the purposes of changes to paragraph 61, for decision-taking, where emerging local plans have been submitted for examination or where they have been subject to a Regulation 18 or Regulation 19 consultation which included both a policies map and proposed allocations towards meeting housing need, and the housing requirement as set out in strategic policies has become more than five years old in the extant plan, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years' worth of housing against their local housing need instead of a minimum of five years as set out in paragraph 75 of the document. These arrangements will apply for a period of two years from the publication date.

Old paragraph 122 relating to the housing delivery test has been removed. The definitions in Annex 2: Glossary have also been updated.

The Housing Delivery Test has been amended to include reference to the number of homes granted permission as well as those delivered. It also notes that the Housing Delivery Test results should be published each winter, rather than in November.

Conclusion

You'd have a hard time arguing that the NPPF proposed changes are not intrinsically political above all else. The theme is a watering down of the existing position, rather than a master re-think of approach. Concern is raised amongst us planners about the apparent lack of ambition to truly deliver housing (and paragraph 60) but much of this is predicated on local authorities having up-to-date local plans in place, and we all know what the success rate is with some authorities in managing to get local plans over the line. Yes, there will be those that seek to shut the doors to development until the courts set out what is really expected from authorities but if interpreted correctly by authorities, is it potentially just business as usual, we will have to wait and see...

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