

## Report to consider a response to the consultation on the Government's "Levelling Up & Regeneration Bill"

### Background

The government has released the Levelling-up and Regeneration Bill: reforms to national planning policy. As well as seeking views on the government's proposed approach to the National Planning Policy Framework (NPPF) the consultation also canvasses opinion on its proposed approach to preparing National Development Management Policies.

The NPPF, first published in 2012 and revised several times since, sets out the Government's economic, environmental and social planning policies in England. The policies in the framework apply to the preparation of Local and Neighbourhood Plans and to decisions on planning applications.

Alongside the consultation on the Bill, the government published a [proposed text of the NPPF revisions](#). The consultation on them ends at 11.45pm on 2 March 2023. The government says it will respond to this consultation by Spring 2023, publishing the framework revisions as part of this, "so that policy changes can take effect as soon as possible".

The government also promises a wider review of the NPPF, to follow Royal Assent of the Levelling Up and Regeneration Bill. "The government will consult on the detail of these wider changes next year, reflecting responses to this consultation", the planning reforms consultation says.

### Proposals

Two summaries (from Locality and the council's Neighbourhood Plan consultant) of the main proposals are set out in the attachments at the end of the report with the full details of the consultation being viewed on <https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy>

The proposed changes in the NPPF which are expected to take effect from Spring 2023, have significant implications for Neighbourhood Plans and are summarised below:

**Neighbourhood Plans offer protection from unwanted development for five years rather than two.** The NPPF currently states that in areas with Neighbourhood Plans "which contain policies and allocations to meet its identified housing requirement" that are less than two years old, the "adverse impact of allowing development that conflicts with the neighbourhood plan is likely to outweigh the benefits", even if the local authority's planning policies are out of date. This would be extended to plans that are up to **five years old** under the government's proposals.

Areas will no longer have to meet supply and delivery tests for plans to benefit from protection. The government is proposing to remove tests that currently mean local planning authorities need to demonstrate at least a three-year housing land supply (for NPs that have policies / allocations to meet the identified housing requirement) and have delivered a minimum amount of housing for areas covered by neighbourhood plans to be protected from the NPPF's "presumption in favour of sustainable development". This would mean that the *"adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits"* even in areas with low housing delivery or supply.

Two other relevant observations for proposed changes in the wider L&R Bill (so not a change expected as soon as the points above) for your information:

**Communities will be able to make use of a new neighbourhood planning tool.** The government is proposing to introduce "neighbourhood priorities statements", a simplified version of a neighbourhood plan. The NPPF prospectus states that these will give communities the opportunity to "formally input into the preparation of local plans". Authorities will be required to take these into account when preparing local plans.

**Communities will be able to produce Neighbourhood Plans under the existing framework for at least two more years.** All neighbourhood plans submitted after 30 June 2025 will be required to comply with the new legal framework, but those submitted before this date can meet the current rules. Any 'made' plans prepared under the current system will "remain in force" until they are replaced. *"The reformed plan-making system is intended to be introduced in late 2024. In the meantime, we recognise the importance of ensuring that as many authorities as possible can take advantage of the policy changes outlined in this wider document, which are expected to take effect from spring 2023."*

## **Recommendation**

The Council consider responding to the Government's consultation on the 'Levelling Up and Regeneration Bill' and in particular the proposed changes to the NPPF that relate to Local and Neighbourhood Planning

Summary of LU&R Bill proposals

## HOW HOUSING NEED SHOULD BE ASSESSED, AND THE RESULTING FIGURES APPLIED

1 The government says it will review the implications for the standard method of new household projections data based on the 2021 Census, which is due to be published in 2024. But it is not proposing any changes to the standard method formula itself through this consultation.

2 More explicit indications will be given in planning guidance of the types of local characteristics which may justify the use of an alternative method of assessing housing need, the document says. Examples could include islands with a high percentage of elderly residents, or university towns with an above-average proportion of students

3 The need to avoid development that would be uncharacteristically dense for the area can outweigh the requirement to meet local housing need, the draft NPPF revision says. This calculation should be made taking into account the principles in local design guides or codes, the document says

4 Authorities would not need to review their green belts, even if meeting housing need would be impossible without such a review. A draft NPPF revision is intended to make clear that local planning authorities are not required to review and alter Green Belt boundaries if this would be the only way of meeting need in full.

5 Councils would be able to take past over-delivery of housing into account when assessing housing need. The draft NPPF is intended to make clear that, if permissions that have been granted exceed the provision made in the existing plan, that surplus may be deducted from what needs to be provided in the new plan.

6 The test of 'soundness' for local plans is to be softened. The draft NPPF revisions say that plans will no longer be required to be 'justified'. Instead, the examination would assess whether the local planning authority's proposed target meets need so far as possible, takes into account other policies in the Framework, and will be effective and deliverable, the consultation says. For the purposes of the changes to the test of soundness, the government proposes "that these will not apply to plans that have reached pre-submission consultation stage, plans that reach that stage within three months of the introduction of this policy change, or plans that have been submitted for independent examination".

7 The government intends to retain the uplift of 35 per cent to the assessed housing need for the 20 largest towns and cities in England. The draft NPPF revisions would require that this uplift is, "so far as possible", met by the towns and cities concerned rather than exported to surrounding areas, except where there is voluntary cross-boundary agreement to do so.

8 The duty to co-operate is to be replaced with an as-yet-unformulated "alignment policy". The duty will remain in place until those provisions come into effect, the document says, and "further consultation on what should constitute the alignment policy will be undertaken".

9 Some authorities with emerging local plans will benefit from a reduced housing land supply requirement. For the purposes of decision-making, where emerging local plans have been submitted for examination or where they have been subject to a Regulation 18 or 19 consultation which included both a policies map and proposed allocations towards meeting housing need, those authorities will benefit from a reduced housing land supply requirement, the consultation says. This will be a requirement to demonstrate a four-year supply of land for housing, instead of the usual five. These arrangements would apply for a period of two years from the point that these changes to the Framework take effect, the document adds.

## **CHANGES TO THE HOUSING DELIVERY TEST AND FIVE YEAR HOUSING LAND SUPPLY TEST**

10 Authorities with an up-to-date local plan will no longer need to continually show a deliverable five-year housing land supply. In this case, “up-to-date” means where the housing requirement as set out in strategic policies is less than five years old, the document says. The government proposes the change to take effect when it publishes the revised National Planning Policy Framework, “expected in Spring 2023”.

11 Councils would no longer have to provide five-year housing land supply buffers

12 Local planning authorities would be allowed to include historic oversupply in their five-year housing land supply calculations. This would be implemented by amending the Framework and planning practice guidance, the document says.

13 Evidence of sufficient deliverable permissions could save councils from the most severe Housing Delivery Test sanction. The document proposes to add to the test an additional permissions-based test. This will ‘switch off’ the application of ‘the presumption in favour of sustainable development’ as a consequence of under-delivery, where a local planning authority can show sufficient permissions for enough deliverable homes to meet their own annual housing requirement or, where lacking an up-to-date plan, local housing need, plus an additional contingency based on the number of planning permissions that are not likely to be progressed or are revised (which the government proposes defining as 115 per cent of the housing requirement or local housing need).

14 The government is considering suspension or amendment of the usual consequences of failure of the 2022 Housing Delivery Test. “Given our proposed changes,” the document says, “we would like to receive views on whether the test’s consequences should follow from the publication of the 2022 Test or if they should be amended, suspended until the publication of the 2023 Housing Delivery Test, or frozen to reflect the 2021 Housing Delivery Test results while work continues on our proposals to improve it”.

## **MEASURES TO TACKLE SLOW BUILD-OUT OF PERMISSIONS**

15 Past “irresponsible planning behaviour” by applicants could in future be taken into account when applications are being determined. As examples of such applicant behaviour, the document cites “persistently breaching planning controls or failing to deliver their legal commitments to the community”. Primary legislation would be needed to enact such measures, on which the government is seeking views, the document states.

16 Government data will be published on developers of sites over a certain size who fail to build out according to their commitments. This, like the measures mentioned in points 17 and 18, will be introduced via changes to national planning policy following the passage of the Levelling Up Bill, the document says.

17 Developers will be required to explain how they propose to increase the diversity of housing tenures to maximise a development scheme's absorption rate (which is the rate at which homes are sold or occupied).

18 Delivery will become a material consideration in planning applications. "This could mean that applications with trajectories that propose a slow delivery rate may be refused in certain circumstances," the document says..

19 A financial penalty for developers that are building out too slowly will be consulted on separately, the document says.

### **ONSHORE WIND DEVELOPMENT/ENERGY EFFICIENCY**

20 Onshore wind power schemes would in future be able to go ahead on sites that have not been designated in the local plan. The government says its proposed changes to the existing NPPF footnote 54 will ensure that "local authorities have a range of routes to demonstrate their support for certain areas in their boundaries to be suitable for onshore wind"

21 Replacing the old turbines with more powerful and efficient models will be made easier. Changes to paragraphs 155 and 158 of the existing NPPF will enable the re-powering of renewable and low carbon energy schemes where planning permission is needed, and providing that the impacts of any development proposal are or can be made acceptable in planning terms, the document says.

22 The NPPF will be amended with a new paragraph 161 to give "significant weight" to the importance of energy efficiency through adaptation of buildings. But the document says that this will be done in a way that ensures that local amenity and heritage continues to be protected.

### **ENVIRONMENTAL PROTECTION AND TACKLING CLIMATE CHANGE**

23 Steps will be taken to prevent developers 'gaming' Biodiversity Net Gain rules by clearing habitats before submitting applications. "We will work with Defra to review the current degradation provisions for Biodiversity Net Gain", the document says, "to reduce the risk of habitat clearances prior to the submission of planning applications, and before the creation of off-site biodiversity enhancements".

24 Use of artificial grass by developers in new development would be clamped down on. "We will consider how we can halt "the threat to wildlife created by the use of artificial grass by developers in new development (noting the importance of some uses of artificial grass such as on sports pitches)", the document says.

25 The possibility of embedding a broad form of carbon assessment in planning policy will be explored. “We are interested in whether effective and proportionate ways of deploying a broad carbon assessment exist, including what they should measure, what evidence could underpin them ... and how they may be used in a plan-making context or as a tool for assessing individual developments”, the document says.

26 Policy and guidance in relation to the production of Strategic Flood Risk Assessments will be reviewed. “This will be done to encourage maximum coverage and more frequent updates”, the document says..

## **PLAN-MAKING**

27 Steps are being taken to maximise the amount of authorities who can make use of policy changes around plan-making intended to be introduced by NPPF revisions in the Spring, before the revised plan-making system set out in the Levelling Up Bill is introduced in late 2024. Plan-makers will have until 30 June 2025 to submit their local plans, neighbourhood plans, minerals and waste plans, and spatial development strategies for independent examination under the existing legal framework. The government is also proposing that, to be examined under existing legislation, all independent examinations of local plans, minerals and waste plans and spatial development strategies must be concluded, with plans adopted by 31 December 2026.

28 Authorities will be required to start work on new plans by, at the latest, five years after adoption of their previous plan, and to adopt that new plan within 30 months. “Under the reformed system, which we expect to go live in late 2024, there will be a requirement for local planning authorities and minerals and waste planning authorities to start work on new plans by, at the latest, five years after adoption of their previous plan, and to adopt that new plan within 30 months,” the document says.

29 Authorities that do not meet the 30 June 2025 submission deadline for ‘old-style’ plans will need to prepare plans under the new plan-making system.

30 Plans that will become more than five years old during the first 30 months of the new system will continue to be considered ‘up-to-date’ for decision-making purposes for 30 months after the new system starts. Where a plan has been found sound subject to an early update requirement, and the Inspector has given a deadline to submit an updated plan within the first 30-months of the new system going live, this deadline will be extended to 30-months after the new system goes live, the document says

31 Authorities will no longer be able to prepare supplementary planning documents (SPDs) in the revised planning system. Instead, they will be able to prepare Supplementary Plans, the document says, which will be afforded the same weight as a local plan or minerals and waste plan. The government proposes that, when the new system comes into force (expected late 2024), existing SPDs will remain in force for a time-bound period; until the local planning authority is required to adopt a new-style plan. Current SPDs will automatically cease to have effect at the point at which authorities are required to have a new-style plan in place, it says.

## NATIONAL DEVELOPMENT MANAGEMENT POLICIES

32 There is intended to be a consultation next year on how National Development Management Policies (NDMPs) are implemented. They will cover planning considerations that apply regularly in decision-making across England or significant parts of it, the document says, such as general policies for conserving heritage assets, and preventing inappropriate development in the Green Belt and areas of high flood risk. Before any NDMP was designated by the secretary of state, there would be a public consultation

33 The starting point for creating NDMPs would be existing parts of the NPPF that apply to decision-making. “However, we welcome views on whether there are other topics that should be added,” the document says. Two other categories for NDMPs, in the government’s “initial view”, are firstly, “selective new additions to reflect new national priorities, for example net zero policies that it would be difficult to develop evidence to support at a district level, but which are nationally important”, and secondly “selective new additions to close ‘gaps’ where existing national policy is silent on planning considerations that regularly affect decision-making across the country (or significant parts of it)”. Indicative examples of ‘gaps’ where national policy is silent on common decision-making issues, which the documents says NDMPs might address, are: carbon reduction in new developments; allotments and housing in town centres and built-up areas.

34 NDMPs will cover “only matters that have a direct bearing on the determination of planning applications. Other key principles, according to the consultation, are that they would be “limited to key, nationally important issues commonly encountered in making decisions on planning applications across the country (or significant parts of the country); and that they would solely address planning issues, “in other words that concern the development and use of land”.

## OTHER

35 Authorities will be expected to take particular care to ensure that they meet need for retirement housing, housing-with-care and care homes. The government proposes to do this by adding an additional specific expectation to the NPPF.

36 Authorities will be encouraged to use planning conditions to require clear details of a scheme’s design and materials. The document says: “We propose to amend the Framework to encourage local planning authorities to consider how they can ensure that planning conditions associated with applications reference clear and accurate plans and drawings which provide visual clarity about the design of development, as well as clear conditions about the use of materials where appropriate, so they can be referred to as part of the enforcement process”.

37 Mansard roofs would be encouraged. The government is proposing that “a reference to mansard roofs as an appropriate form of upward extension ... where appropriate” should be added to the NPPF.

38 Protection against development that conflicts with neighbourhood plans is to be extended to older such plans. The NPPF currently says that the adverse impact of allowing development that conflicts with the Neighbourhood Plan is likely to outweigh the benefits, but not if that plan is more than two years old. The government is proposing that the protection should be extended to plans that are up to five years old. It is also proposing removing tests which currently mean local planning authorities need to demonstrate a minimum housing land supply and have delivered a minimum amount in the Housing Delivery Test for Neighbourhood Plans to benefit from the protection.

39 Planning for provision of social rent homes is to be given higher priority in the NPPF, the document says.

# NPPF consultation: a summary

As part of its commitment to levelling up across the country (see [2022 Levelling Up White Paper](#) and the [Levelling-up and Regeneration Bill \(the Bill\)](#)), the Government is [consulting until 2 March 2023](#) on how it might develop new and revise current national planning policy to support its wider objectives. This includes a series of specific changes to the NPPF as well as a wider range of proposals on key issues, including the envisaged role for National Development Management Policies (NDMPs).

A fuller review of the NPPF was also announced, which is likely to take place following the implementation of the government's proposals for wider changes to the planning system, including the Levelling-up and Regeneration Bill.

Below is a high-level summary of the consultation to help you get a sense of some key proposals that are particularly relevant to neighbourhood planning and community engagement in the planning system.

## 1. Supporting neighbourhood planning

### Boosting the status of neighbourhood plans

Currently, the NPPF protects neighbourhood plans from the presumption in favour of sustainable development in circumstances where a local planning authority's (LPA) local plan is out of date, by stating that "the adverse impacts of allowing development that conflicts with the neighbourhood plan is likely to significantly outweigh the benefits". However, this only applies if certain conditions are met. Where the conditions are met the relevant policies in a neighbourhood plan can still carry weight, despite the local plan being out of date.

The Government proposes to amend these conditions so that more neighbourhood plans can continue to carry weight in local planning decisions for longer. This includes extending the protections outlined above to neighbourhood plans that are up to 5 years old, instead of the current requirement of the plan being less than 2 years old.

The condition that requires the LPA to have at least a 3-year housing land supply and 45% of housing delivery over the past 3 years would also be removed, meaning that even neighbourhood plans in areas with low housing delivery and supply would benefit from this protection.

Additionally, even older neighbourhood plans will be more likely to benefit from increased protection as a result of proposals to remove the requirement for LPAs with an-up-to-date local plan to continually provide a 5-year housing land supply. This is because they will not be subject to the presumption in favour of sustainable development as often as they currently are, as long as the local plan for their area is up to date (see section 4. below for more details).

### **Introducing a new neighbourhood planning tool**

As part of the Levelling Up and Regeneration Bill, the Government plans to introduce a simplified version of neighbourhood plans called “neighbourhood priorities statements”. Although this consultation does not make any specific proposals in relation to this new tool, it does allude to it as a means for communities to “formally input into the preparation of local plans”. It is important to note that this won’t replace neighbourhood plans as we know them, it is just an alternative.

## **2. Introducing National Development Management Policies**

As part the Levelling Up and Regeneration Bill and following further consultation, the Government plans to introduce a series of nationally set policies aimed at decision-making on planning applications. These National Development Management Policies (NDMPs) would be given the same statutory weight as local development plans in certain planning decisions and could be a material consideration (i.e. relevant and that need to be considered) in some other planning decisions.

Current development management policies in the NPPF are significant material considerations, but do not have any statutory status. The Government proposes to use these policies as the starting point for creating NDMPs and welcomes views on other topics that should be added. It is proposed that NDMPs are set out in a separate document to the NPPF. The NPPF would be refocused on principles for plan making and would continue to act as material consideration and not carry statutory weight.

It is proposed that NMDPs will not impinge on local policies for shaping development nor directing what land should be allocated for. New development plans would not be able to include policies which duplicate or are inconsistent with NDMPs, but proposals retain scope for LPAs and local communities to produce their own policies on distinctly local issues. Where there is a conflict between them and development plan policies when making a decision on planning applications, NDMPs would take precedence.

### 3. Simplifying local plan making

The Government proposes to simplify the tests of 'soundness' through which local plans are examined, so that they are no longer required to be 'justified'. They intend to do this to allow a more proportionate approach to local plan examination. Instead, local plan examination would assess whether the LPA's proposed targets meet needs so far as possible, taking account of other policies in the NPPF, and whether they are effective and deliverable.

Proposed changes also require LPAs to meet their objectively identified housing need "so far as possible", instead of the current requirement that this is met "as a minimum". The need for local plans to be informed by agreements with other authorities so that unmet need from neighbouring areas is accommodated would also be removed.

### 4. Assessing housing need and delivery

#### Updates to the housing land supply requirements

Currently, LPAs are required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of 5 years' worth of housing against their local housing requirement. When an LPA cannot demonstrate that they have identified such supply, its policies are considered out of date and the presumption in favour of sustainable development kicks in.

The Government is proposing that LPAs with a housing requirement in their local plan that is less than 5 years old (or that has been reviewed and found not to require updating) will no longer need to continually demonstrate a deliverable five-year housing land supply for their local plan to be considered up to date.

#### Updates to the Housing Delivery Test

The Housing Delivery Test currently measures the number of homes built within an LPA area against the number of homes required. If delivery of built homes is below 75% of the housing requirement over the previous 3 years, the local plan is considered out-of-date and the presumption in favour of sustainable development applies.

To avoid unfairly penalising LPAs where slow housing delivery results from developer behaviour, the Government proposes that permissions for housing development are counted in as part of the Housing Delivery Test, in addition to the number of homes delivered. This means that the presumption in favour of sustainable development would not apply as a consequence of under-delivery if an LPA can demonstrate that there are 'sufficient' deliverable permissions to meet its housing need requirement.

## **Adapting housing need figures to local circumstances**

The Government aims to clarify when it is acceptable to bring forward a local plan that does not meet locally identified housing needs in full. This includes proposing that clear evidence of past over delivery (in terms of permissions) may be deducted from the total housing requirement in the new plan. Proposals also clarify that LPAs are not required to undertake Green Belt reviews in order to find land on which to meet housing need, and specify that if housing need can only be met by building at densities that would be significantly out of character with the area (taking account of design guides or codes), then this may justify them not meeting their housing need in full.

Further proposals clarify that the outcome of the [standard method for assessing local housing need](#) (the Government formula set out to identify the minimum number of homes expected to be planned for locally) is a non-mandatory, advisory starting point and that there may be exceptional circumstances relating to geographical and demographic local characteristics which justify an alternative approach to assessing housing need.

## **5. Affordable housing and housing market diversification**

### **Supporting the role of community-led housing groups**

Proposed NPPF changes encourage LPAs in rural areas to support development proposals from community-led housing groups. Views are sought on what further changes could facilitate community-led development of good-quality affordable homes, particularly on exception sites.

### **Giving more weight to social rent homes**

The Government intends to make changes to the NPPF to clarify that LPAs need to give greater importance in planning to social rent homes, both when addressing their overall housing requirements and when making planning decisions to encourage more homes of this type. Views are sought on this proposal and so are suggestions on the best mechanisms to deliver it.

### **Encouraging the use of small sites**

Initial views are sought on whether, and how, the NPPF could be strengthened to encourage greater use of small sites, particularly in urban areas to speed up housing delivery (particularly affordable housing) and help diversify the house building market.

## **6. Tackling slow build out and developer accountability**

In response to concerns about the pace at which some sites with planning permissions are progressing, a series of measures are proposed, including NPPF changes clarifying

that delivery can be a material consideration in planning applications (meaning that applications proposing a slow delivery rate may be refused).

Views are also sought on ways to improve developer accountability to ensure that “bad developers cannot continue to play the planning system”. This includes the option of enabling LPAs to consider past irresponsible behaviour a material consideration when determining planning applications, or to decline to determine applications where the applicant has a demonstrable track record of past irresponsible behaviour.

## 7. Promoting beauty and design quality

Proposed changes to the NPPF confirm that the primary means of assessing and improving the design of development should be through the preparation of a design code in line with the National Model Design Code. In order to support effective enforcement of design guides and codes, further proposed changes state that LPAs should ensure relevant planning conditions refer to clear and accurate plans and drawings providing visual clarity about the design of the development and use of materials. The Government also recognises the important role of gentle densification via upward extension in achieving well designed places (particularly mansard roofs) and is proposing that this is better reflected in the NPPF.

## 8. Supporting a localist approach to onshore wind development

Currently, permission for wind energy development involving turbine(s) can only be granted through designation in the development plan. In order to better reflect views of local communities, proposals include giving LPAs the option to grant permission for this type of development through Local Development Orders, [Neighbourhood Development Orders and Community Right to Build Orders](#), provided it can be demonstrated that the planning impacts identified by the affected local community have been appropriately addressed and that the proposal has demonstrable community support.

## 9. Setting out a timeline for transitional arrangements

The fully reformed plan making system is set to be introduced in late 2024, following further consultation. In the meantime, the Government intends to update national policy in Spring 2023 to reflect proposed changes set out in the current consultation.

It is proposed that plan makers have until 30 June 2025 to submit their Local Plan, Neighbourhood Plan, and other local development plan document for examination under the existing legal framework. LPAs and community groups that do not meet this deadline will need to prepare plans under the new plan-making system. It is also specified that made neighbourhood plans prepared under the current system would continue to remain in force under the reformed system until they are replaced.

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