



Francis Taylor Building

THE NEW NPPF

AIDE MEMOIR: SOME KEY CHANGES

References to the new NPPF (NPPF2) appear in bold and references to the Old version (NPPF1) are in bracketed plain text.

NPPF2 very largely reflects the content of the Consultation Draft revision issued in March 2018. Where there are changes these have often been made by way of footnote references of which there are now 69 compared to NPPF1's 41, emphasising the need to pay careful attention to them.

Key Dates

1. NPPF2 is a material consideration from the date of publication **212**, but NPPF1 will apply to the examination of Local Plans submitted on or before 24 January 2019 **214**.
2. The Housing Delivery Test applies from November 2018, with the percentage thresholds for *substantially below* (in terms of delivery) increasing in 3 phases between November 2018 and November 2020 **215**.

General

3. NPPF2 now states that the Government's planning policies "*should be applied*" **1**, whereas previously, the *expectation* was that they would be. This change is coupled with the deletion of NPPF1's reference to its providing a framework "*within which distinctive local and neighbourhood plans can be prepared*" [1]. Increased centralisation is a feature of NPPF2.
4. The implications of Brexit are recognised by the deletion of the reference to "*relevant EU obligations and statutory requirements*" [2] and its replacement with "*relevant international obligations*".
5. The emphasis (albeit strengthened) remains on reading NPPF2 as a whole in deciding whether or not development is sustainable **2, 6, 9** and the high level meaning of the term *sustainable development* remains as set out in Resolution 42/187 of the UN's General Assembly.

Sustainable Development

6. NPPF1's *dimensions* of sustainable development (economic, social and environmental) have become *objectives* **8** and, whilst similarly worded, there are two notable tweaks. The social objective is now to *ensure a sufficient number and range of homes can be provided* replacing NPPF1's somewhat woollier wording and the environmental objective now expressly includes *making effective use of land*.

The Presumption

7. The presumption in favour of sustainable development remains "*at the heart of the framework*" **10**.

8. In terms of plan-making, the presumption now emphasises the role of *strategic policies* **11** (defined in the glossary) which should *as a minimum* provide for the objectively assessed needs of the area, as well as any need which cannot be met within neighbouring areas (established through an SOCG). This presumption can be displaced by two re-ordered and (in one case) re-worded exceptions. The first exception is the old “restrictive policies” one, re-worded for clarity to refer to the policies of NPPF2 *which protect areas or assets of particular importance*. These are now exclusively defined in footnote 6.
9. For decision taking the injunction remains to approve proposals which accord with an up to date development plan without delay. Where there are no relevant development plan policies (*silence* is no longer used) or those policies most important for determining the application are out of date, proposal should be approved unless one of the two exceptions applies.
10. Footnote 7 states that local plan policies will be out of date where a five year supply of housing cannot be demonstrated or the HDT indicates that the delivery of housing was substantially below (less than 75%) of the housing requirement over the previous three years. Transitional arrangements govern the HDT (see Annex 1) **215**.
11. For Neighbourhood Plans (NPs), NPPF2 provides guidance on where the adverse effects of a development are likely to outweigh its benefits **14**. Reflecting the earlier WMS, the objective is to offer a degree of protection to recently adopted NPs. Development which offends a NP which is two years old or less, which makes provision for housing and where the lpa have a 3 year supply of housing and have delivered at least 45% of their assessed requirement over the last 3 years, is likely to be more harmful than beneficial. Transitional arrangements apply to paragraph 14 – see Annex 1 **216**.

Plan-Making

12. NPPF2’s key change is the emphasis on *strategic policies*. They have to be provided but the manner of their production i.e. discrete DPD or in a “traditional” Local Plan with other non strategic policies **17** is a matter for the lpa’s discretion.
13. Strategic policies should set out the overall strategy for the *pattern, scale* and, interestingly, *quality* of development and make sufficient provision to meet need, to provide infrastructure and services and for the conservation of the built and natural environment **20** They must include policies for addressing cross border issues. They should have a 15 year horizon **22** and must be identified in the DPD as strategic policies **21**.
14. Strategic policies must provide a clear strategy for bringing sufficient land forward at a sufficient rate to meet need by allocation or, if more appropriate, other mechanisms such as the Brownfield Land Register (“BLR”). They must set out the housing requirement for the plan area **65** and also for designated Neighbourhood Areas unless that is not possible (in which case the lpa must supply an indicative figure on request) **66**.
15. A housing trajectory must be included in strategic policies **73**.

Plan-making: The Duty to Cooperate

16. Evidencing the discharge of the DTC now require one or more SOCGs produced using the approach set out in the PPG and “*made publicly available throughout the plan-making process to provide transparency*” **27**.

Plan-making: Evidence Base

17. Proportionality remains stressed **31**, with evidence *focused tightly on supporting the relevant policies*, whilst taking account of market signals.

Plans: Review

18. Reflecting the new statutory requirement for 5 yearly reviews, NPPF2 requires a review *no later* than 5 years from the date of adoption of a Local Plan/Spatial Development Strategies **33** and earlier if there is a significant change in assessed housing need. Note the distinction drawn between the *process* of a review and actually changing the content of a plan. There is *no requirement* to change the content of a local plan/SDS every 5 years; only to review its content to decide whether a change is required.

Plans: Examination

19. As heralded in the draft Revision, NPPF2 retains the headline tests of soundness but tinkers with the wording. The plan must as a minimum, meet its objectively assessed needs (not just for housing), its plan strategy for the area must be *an appropriate one*, rather than *the most appropriate one* as NPPF1 required, and to be effective, cross boundary issues *should have been dealt with rather than deferred* **35**.

Decision making: Conditions & Obligations/Viability

20. Conditions should be kept to a minimum and only imposed where the policy tests are met **55**. Grampian conditions are to be avoided unless there is a clear justification for them.
21. Development which complies with the section 106 requirements of an up to date local plan can be assumed to be viable unless the applicant can demonstrate that it is not **57**. Any submitted viability assessment should reflect the PPG advised approach (issued on 24 July but itself to be kept under review) and be made publicly available The weight to be given to a viability assessment is a matter of judgment for the decision maker and should reflect whether there have been any material changes in circumstance since the adoption of the local plan.

Homes

22. The policy objective is now expressed a delivering a *sufficient supply* rather than a *wide choice* of homes and there is some tentative recognition that delivery is dependent on factors other than simply land supply; NPPF2 states that it is important that land with planning permission is developed without unnecessary delay **59**.
23. The assessment of need should use the standard methodology (this methodology may be adjusted in September 2018 after the new household projections are released), unless there are *exceptional circumstances* **60** and it must also include unmet need from neighbouring areas (*neighbouring areas* are not defined).
24. For affordable housing, the WMS threshold of major development is now incorporated as is the Vacant Building Credit **63**. Affordable housing has an extended definition in the glossary including Starter Homes and Discounted Market Sales.

25. On major housing developments (defined in the glossary as 10 or more dwellings for this purpose), 10% affordable housing should be expected unless (a) that would exceed the identified need; (b) significantly prejudice the ability to meet the identified affordable housing requirements of specific groups or (c) one of four exceptions is met (including that the development is for purpose built elderly or student accommodation) **64**.
26. Support is given for *Entry Level Exception Sites* (defined in the glossary) where (a) they are unallocated; (b) adjacent to existing settlements and proportionate to their size; (c) they do not compromise one or more area or asset of particular importance and (d) comply with local design policies and standards **71**.
27. The five year supply requirement of deliverable housing sites with buffer, is now contained in **67** and the terms *deliverable and developable* now have glossary rather than footnote definitions. Annual updates of supply as against the requirement must be prepared, allowing for:
- a minimum 5% buffer in all cases;
 - 10% where the lpa relies on a recently adopted Local Plan (footnote 38 defines the term *recently adopted* for this purpose) or an Annual Position Statement endorsed by the SoS;
 - or 20% where there has been significant under-delivery over the previous 3 year period (footnote 39 notes that from November 2018, this will be delivery below 85% of the requirement) **73/74**.
28. Where delivery falls below 95% of the requirement over a three year period, an action plan to assess the causes and identify actions to increase future delivery **76**.
29. In terms of allocation, 10% of the identified housing requirement (rather than the 20% consulted upon) should be on sites no larger than one hectare, unless there are strong reasons to the contrary and great weight is to be given to the use of suitable sites in urban areas for housing **68/118**. This is coupled with new advice on maximising density **122**, particularly in areas where there is an existing or anticipated shortage of land where minimum density standards should be used for city or town centre locations or those well served by public transport **123**. Where a proposal fails to make efficient use of land, it should be refused (taking into account the NPPF2 policies i.e. not necessarily).
30. As in the draft, the only mechanism advocated to secure timely starts to permitted development is a condition providing for a shorter period for implementation than the statutory default position **76**. An lpa must also assess why an earlier grant of permission has not been implemented but not to any stated end.

Highways

31. NPPF2 **109**, in contrast to the draft proposals, now makes it clear that the 'severe impact test' for refusal of planning permission on highways grounds applies to highway capacity and not highway safety. It suffices for a refusal on safety grounds that the effect is *unacceptable*.

Design

32. The emphasis on good design is arguably strengthened with plans now encouraged to set out a clear design vision and design expectations **125** with use made of suitably flexible visual tools, such as design guides and codes **126**. Dumbing down of approved designs during construction is discouraged **130**.

Green Belt: Boundary Revision

33. NPPF2 now indicates what is required to satisfy the exceptional circumstances test for Green Belt boundary revision. This broadly reflects the judgment of Jay J in Calverton Parish Council v Nottingham CC [2015]EWHC 503 (Admin). It effectively requires demonstrating that there are no reasonable alternatives, as much use as possible has been made of suitable brownfield sites/under-utilised land, density has been maximised and out of plan area non-Green Belt opportunities have been examined **137**. The need for changes to existing boundaries must be established through strategic policies but the changes to the detailed boundaries can be made by non-strategic policies or through NPs **136**.
34. Where the need to release Green Belt land has been demonstrated, land which has been previously developed or is well served by public transport should be considered first **138**.

Green Belt: Inappropriate Development

35. There are two noteworthy changes to what is not inappropriate development. Correcting the obvious error made in NPPF1, changes of use which do not offend any of the Green Belt purposes are not inappropriate **146**. This resolves the issue left unresolved by the Courts in Timmins v Gedling BC [2016] 1 All ER 895.
36. Limited infilling or partial or complete redevelopment of previously developed land which would not have a greater impact on Green Belt openness or *development of previously developed land which would not cause substantial harm to such openness and would contribute to meeting affordable housing need within the area* is appropriate **145**. This must be read with the now extended definition of affordable housing set out in the glossary.

Natural Environment

37. Biodiversity gains are no longer to be secured only “*where possible*” **170**.
38. In relation to AONBs, National Parks and the Broads, the scale and extent of development within the designated areas is to be *limited* **172**. Major development remains unacceptable unless exceptional circumstances exist. “*Major*” for this purpose remains undefined (the glossary definition of “*major*” expressly does not apply), but footnote 55 states that it is to be assessed by reference to the nature, scale, setting and effect of a given proposal.

Air Quality

39. NPPF2 **181** contains a new sentence:

“Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications”.

Bad Neighbours

40. Where the operation of an existing business could have a significant adverse effect on new development in its vicinity, the onus is now on the applicant to provide suitable mitigation *before the development is completed* **182**.

Historic Environment

41. NPPF2 makes no material substantive changes but **193** helpfully makes very clear that any harm to the significance of a designated heritage asset must be given great weight whether it is substantial or less than substantial. This paragraph also distinguishes *substantial harm* and *total loss* but does not obviously seek to address the issues raised by Jay J's judgment in Bedford Borough Council v SSCLG [2013] EWHC 2847. This may come with promised revisions to the PPG .

Minerals

42. Other than requiring lpas to recognise the benefits of on-shore oil and gas exploration **209**, NPPF2 is concerned principally with tidying up NPPF1.

Members of Chambers' Planning Group

Andrew Tait QC	Andrew Fraser-Urquhart QC	Annabel Graham Paul
Robin Purchas QC	Hereward Phillpot QC	Hugh Flanagan
Guy Roots QC	Alexander Booth QC	Stephanie Hall
Richard Phillips QC	Jeremy Phillips QC	Sarah Sackman
Robert McCracken QC	Philip Petchey	Rebecca Clutten
Michael Humphries QC	Timothy Comyn	Ned Westaway
David Matthias QC	Meyric Lewis	Isabella Tafur
Morag Ellis QC	Leo Charalambides	David Graham
Craig Howell Williams QC	Jeremy Pike	Michael Fry
Richard Glover QC	Melissa Murphy	George Mackenzie
Simon Bird QC	Juan Lopez	Alexander Greaves
Douglas Edwards QC	Richard Honey	Caroline Daly
Gregory Jones QC	John Jolliffe	Charles Streeten
Suzanne Ornsby QC	Mark Westmorland Smith	Charles Forrest
James Pereira QC	Prof. Pavlos Eleftheriadis	Merrow Golden
Saira Kabir Sheikh QC	Cain Ormondroyd	Horatio Waller