



CONTACT

Jason Lowes

07899 963524

jason.lowes@rapleys.com

Planning is back in the headlines as the government seeks views on England-wide changes to the planning system to solve the nation's housing crisis. Specifically, the government has issued a re-drafted National Planning Policy Framework (NPPF), as well as suggestions about how to amend the developer contributions regime.

Readers with long memories will recall that the current version of the NPPF was published in 2012 as part of the “bonfire of regulations” brought in by the coalition government. It introduced the “presumption in favour of sustainable development”, a concept that has been the subject of much debate since.

The current NPPF emerged against a background of alarming stories in the press suggesting it marked the end of the Green Belt (which, obviously, it didn't). So far, the headlines on its replacement have been largely government generated, suggesting that the two main (seemingly slightly contradictory) problems with the planning system are:

- Some local authorities (“NIMBY authorities”) are preventing development by withholding planning permission and
- Housebuilders not building enough houses.

However, in any event there is not a great deal in terms of answers to either in the consultation documents. As to the latter point, the government has announced that

Oliver Letwin will be carrying out an independent review before any initiatives are decided upon.

The draft National Planning Policy Framework (NPPF)

The document runs to 70 pages which is slightly longer than its predecessor and at first glance much is familiar, for example the various aspects (formerly “roles”) of sustainable development (economic, social and environmental). The presumption in favour of sustainable development is also intact, albeit with a small but potentially important change (see below).

However, there are many changes (some hidden in the footnotes), and some headlines are highlighted below:

- In terms of the **presumption in favour of sustainable development** and the “tilted balance” to be applied, the draft refers to policies which are the “most important for determining the application” being out of date and a related footnote clarifies that other Local Plan policies cannot be applied under the aegis of the NPPF policies. If the NPPF is adopted as drafted, the implications of these changes are highly



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likely to be the subject of considerable debate at appeal and potentially in the High Court.

- The draft reflects the **nationwide method of calculating housing need** currently being promoted by the government, albeit leaving other methods open in “exceptional circumstances”. Another important change is formalising the principle that, in preparing local plans, under certain circumstances local authorities do not have to meet all their housing need.
- Joining the benchmark of the five year housing land supply in expressly triggering the presumption in favour of sustainable development is a **“Housing Delivery Test”**, an assessment of actual housing delivery against need.
- In terms of “encouraging” developers to bring forward consented schemes earlier, the draft makes allowance for local authorities to prescribe **shorter time periods for implementing development** than the current standard three years.
- The draft allows for the redevelopment of **brownfield sites in the Green Belt** that has a greater impact than existing development, if it contributes to meeting local affordable housing need and the harm is not “substantial”. This marks, potentially, one of the largest changes to national Green Belt policies for many years.
- In terms of **planning obligations**, the focus is on bringing viability forward as much as possible to the local policy process and for local plans to set percentages of affordable housing and define other obligations. However, there is still allowance for viability to be taken into account at planning application stage – more details below.

In summary, the draft looks more like an incremental change than a “root and branch” review, albeit some of the changes could have significant implications for development if adopted, as ever time will tell.

Consultation on planning obligations

The Government clearly has planning obligations in its sights and beyond the front-loading principle described in the draft NPPF, a number of potential changes to the current system have been proposed, not least:

- Reintroducing “pooling” of s.106 contributions, under certain circumstances
- Ensuring that the viability process is undertaken on an open book basis in all cases
- The ability to link Community Infrastructure Levy (CIL) rates to the existing use of land (at present it only relates to the proposed use of the land)
- Bringing indexing closer to inflation
- Introducing another acronym, a Strategic Infrastructure Tariff (SIT) is proposed, which would effectively be a CIL regime across local authority borders.

Some of these changes will be unpopular with developers, in particular the reintroduction of contribution pooling, an erstwhile feature of the town planning system that CIL was supposed to replace.

However, there may be potential benefits derived from the front-loading process when developers are bidding for sites (particularly those that have been allocated), as it might provide greater transparency relative to the local authority’s position on planning obligations at the outset.

Comments on the drafts can be made until **10 May 2018**. If you would like to discuss the documents and their potential implications on your business, or would like us to help getting your views across to the Government, please contact one of our nationwide team.