

# ADVICE NOTE

## NATIONAL PLANNING POLICY FRAMEWORK 2023

DECEMBER 2023

### INTRODUCTION

The Government has finally published the new National Planning Policy Framework (NPPF), with the Levelling Up & Regeneration Act (LURA) having passed through Parliament in October.

This advice note highlights the key changes that directly affect neighbourhood planning, as well as some others that may have a significant indirect effect. Clients are advised to review as well the more general commentary on the proposals and their context to gain a rounded picture of the current and future structure of the planning system. This includes changes made to the online Planning Practice Guidance.

As we noted in our Advice Note of February 2023, the changes have been presented as relatively few modifications to the previous NPPF. But, once again, we'll all have to learn the new paragraph numbers!

#### **§11 Presumption in favour of sustainable development**

It is proposed to make Local Plan making easier in addressing how housing need is met by allowing Local Planning Authorities (LPA) to argue that full needs cannot be met without harming local character as defined by an adopted design code or guide. §135 later reinforces the use of 'local design codes' to assess development proposals.

*Insight – this is an encouragement for NPs to include a design guide or code.*

#### **§14 Neighbourhood plans in the tilted balance**

This revised paragraph means that made NPs that have met their housing needs shall have greater weight in the tilted balance in determining housing proposals, but for five instead of two years and with the removal of the caveat for the LPA to demonstrate a three year supply of housing land and of the housing delivery test caveat. The final text of its clause (b) has been changed to reference §67 and §68.

In the updated Government Response published alongside the NPPF, it has stated that to benefit from this paragraph, an NP must allocate at least one site for housing, irrespective of the §67/§68 housing figure (most notably where that number is zero). It proposes to publish guidance on this in due course, but it already seems clear.

*Insight – we are pleased that this change has been made. There was never a logic to the previous provisions. Together with the new clarity on making an allocation, this places an even greater premium on NPs doing so to secure this benefit where LPAs have struggled to update their Local Plans and/or consistently maintain a healthy housing land supply.*

*Although §14 does not remove the tilted balance – it never did – it does have the effect of re-tilting it back towards the primacy of the plan-led (NP) system. However, as many QBs will know, very few LPAs are willing to provide an indicative housing figure (§68) until their emerging Local Plans have reached at least the draft (Regulation 18) or pre-submission (Regulation 19) stages, when a §67 figure will finally appear. For those NPs coming forward in advance of a new Local Plan, and wanting/anticipating the need to allocate land for housing, it remains to be seen how many LPAs will be willing to engage new §14 in planning application decisions – the track record so far is patchy at best. As ever, QBs need to ensure their LPAs understand how §14 operates.*

### **§25 Maintaining effective co-operation**

The LURA has now made provision for communities to produce Neighbourhood Priorities Statements, although the regulations and guidance to enact the provision is due in 2024. If those Statements are to play the role intended by the Act then making reference to them in this NPPF paragraph would have made sense as it requires LPAs to ‘engage with their local communities’.

*Insight – this is one of a number of policy disconnects between the new NPPF and LURA. We assume this is because with very little of the LURA enacted, and with Government still committed to another NPPF in 2024, it does not want to make references until they are in place. However, we note that the Local Plan reforms published in July 2023 did not refer to Statements either, perhaps sending a signal about them being an afterthought.*

### **§30 Non-strategic policies**

We note that the footnote to this paragraph (now 16 rather than 18) continues to refer to the ‘general conformity’ basic condition. The LURA has replaced that condition with a condition that is only related to a specific housing supply matter. Although that part of the LURA is yet to be enacted, the retention of this footnote is confusing and, we would hope, will be soon outdated.

### **§63 Housing Needs**

A specific reference has been added to this paragraph to plan for ‘retirement housing, housing-with-care and care homes’ in establishing housing needs. It operates with §61 that relates only to strategic policy (i.e. Local Plans), but could be expected to send a signal to NPs planning for housing needs either through site allocations and/or housing mix policies.

*Insight – we noted that this is already considered in the Housing Needs Assessment reports being produced for QBs through Locality but it may be that it will become more important for NPs to make specific provision. Unfortunately, there continues to be no recognition that in many rural areas, there is a concern that planning for more such housing in towns and villages that are already aging fast, with a healthy supply of these homes, want to slow that trend, not plan to meet it.*

### §70/75/77 Housing supply

As part of other changes to the housing supply section – on which many others will comment – we note a new clause (b) inserted to §70 to support community-led housing development schemes. The glossary now includes a definition of this term, which appears to closely reflect that used to define community land trusts. This is followed up in §73 (and in §82 for that matter) which now refers to that type of development as an alternative to rural exception sites, but the complexity with First Homes policy (per footnote 36) remains unresolved.

More generally, we note §76 which establishes a five year housing land supply for five years from the adoption of a new Local Plan, including those 40% of LPAs that currently have a Local Plan that is less than five years old. This will reduce the regularity with which the ‘tilted balance’ of §11 (and thereby the need for the §14 ‘protection’ for NPs) is engaged. However, the Housing Delivery Test remains in place, per §79 and §80, but is no longer a caveat on the operation of the new §14.

In meeting housing need, the combination of these changes allows LPAs more leeway to determine that figure in a number of technical ways (e.g. the removal of buffers to take account of past under-supply). They also effectively remove the need for an LPA to continually demonstrate a five year supply of housing land if they have an up to date Local Plan.

*Insight – we originally thought these changes may make it easier and quicker for an LPA to provide a QB with a meaningful indicative housing figure that remains in place, more or less, through Local Plan consultation, examination and adoption process. Now, we are not so sure, but they may still succeed in incentivising speedier Local Plan making.*

### §130 Density of residential development

This new paragraph tempers the encouragement of high densities in §129 by stating that this may not be appropriate in some urban areas where it would be ‘wholly out of character’ with an area. However, an LPA would need to use an authority-wide design code to support that case.

*Insight – this makes sense, with the caveat that there is objective design evidence to show that it can be justified, though it is disappointing that the caveat applies only to LPAs’ own codes, and not those produced for NPs. However, a design code that is part of a made NP (and therefore part of the development plan) will carry the full weight of the plan, which should trump this paragraph. This may be an important driver of NPs having a good design code.*

### §145 Green Belt reviews

The revisions to this paragraph (old §142) have backed away from how the proposed changes were phrased, and interpreted. In practice, they do not now change established practice in reviewing Green Belts for many years.

*Insight – we remain concerned that this paragraph continues to prevent communities that want to modify Green Belt boundaries to deliver local sustainable development from doing so unless a Local Plan allows them to.*

### §163 Wind energy

The new footnote 57 allows Neighbourhood Development Orders to grant permission for, wind energy developments.

*Insight – we noted before that the change makes little difference to NPs, which have been able to use the existing NPPF provisions (now §161) to identify suitable land for wind and other renewable energy projects. We have observed a noticeable interest in communities wanting their NPs to take this on. On a related matter, we note that this section of the NPPF has remained silent on resolving the contradictions of national policy in respect of Local Plans and NPs containing policies requiring zero carbon buildings.*

### §181 Agricultural land

A specific reference has been added (via new footnote 62) to agricultural land to restate the value of the ‘best and most versatile’ (‘BMV’) agricultural land as a measure in site assessments for plan making.

*Insight – we noted before that this measure has always been one that an SA/SEA will include, despite the limitations of the data sets (especially in respect of distinguishing the 3A and 3B classifications). QBs can already consider the weight they wish to attach to the measure alongside others, but perhaps this may encourage a greater weighting in the balance if warranted in some places in future.*

### §185 Habitats and biodiversity

A new footnote (66) has been added to this paragraph enabling ‘plans’ (we assume including NPs) to have policies on how proposals on land that has been identified as being part of a local Nature Recovery Network should be managed.

*Insight – it remains early days for understanding how such Networks will ‘hit the ground’ in local areas. Some NPs are already using publicly available data to consider this as a factor in their site assessment work.*

### §209 Non-designated archaeological assets

A new footnote to §209 (old §203) on non-designated heritage assets raises the status of those archaeological assets that are not scheduled but have an equivalent significance to be deemed as ‘designated’, one assumes pending a decision to include them on the Schedule in due course.

*Insight – this type of asset will occasionally feature in an Historic Environment Record for an NP area and so this clarification will be helpful.*

## §227 - §230 Transition arrangements

We previously noted how very difficult it was to decipher exactly how the proposed transition arrangements to the new NPPF related to NPs. It seems clear that the §228 and §229 only relate to Local Plans. It also seems that §230 does not apply to NPs either, although it is possible that its second sentence could be applied, which would have the effect of NPs reaching the ‘pre-submission’ (Regulation 14) stage before 19 March 2024 being examined under the previous NPPF of September 2023, not this new version.

Separately, we have noted in its Government Response to the NPPF consultation, it has restated that NPs submitted for examination before 30 June 2025 will be prepared under the existing Local Plan system. Those NPs that are working to a later timetable will be expected to align with the new system provided for by the LURA.

***Insight – we think that the NPPF transition provisions do not apply to NPs and therefore the new NPPF will inform any NP that is now at examination or at any earlier stage. On the Local Plan system deadline, we consider that although some NP bodies had raised concerns that it may be too soon, the vast majority of new and modified NP projects already underway, or to commence in early 2024 should be submitted by summer 2025.***

## SUMMARY

The changes proposed in late 2022 to the NPPF and LURA that relate most closely to NPs have now been confirmed. For those that may not have seen our Advice Note on those proposals in February 2023, we think it worthwhile in repeating its summary, which we think still holds true:

*“The proposals for neighbourhood planning are generally very positive, especially considering the lack of attention it received in the Planning White Paper in summer 2020. But, the Government and the planning profession continue to see it as peripheral to the wider changes aimed at speeding up Local Plan making to regain the currency of the plan-led system.*

*The changes to Local Plans have been criticised by some outside of local government as ‘better any plan than no plan at all’. We would counter that with an observation of the years since the 2012 NPPF as ‘better any development than no development at all’ that have created much of communities’ distrust of the planning system and their dislike of too many of its outcomes.*

*We, on the other hand, have been convinced by years of neighbourhood planning to see it as the antidote to both these malaises. Communities have proved time and again that despite its faults, and the challenges presented by many of the players in the game, neighbourhood planning can be used to manage change positively. We see no future of speedy Local Plan making and better community engagement in the system without more widespread and effective neighbourhood planning.”*

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