

## 1/2018 Consultation on revised NPPF and reform of developer contributions

9/3/18

### Key points

- MHCLG is consulting on revisions to the National Planning Policy Framework (NPPF) and proposed reforms of the system of developer contributions. The consultations close on 10 May.
- Many of the proposed revisions to the NPPF have been the subject of previous consultations and on these the Government is not seeking to reopen policy debate. These include the following.
- A new requirement for authorities to review local plans at least every 5 years.
- A new approach to viability, aimed at shifting viability assessment to the plan-making stage, making it unnecessary for individual planning applications to be accompanied by a viability assessment.
- A standard method for calculation of local housing need.
- At least 10% of homes on major sites to be for affordable home-ownership
- At least 20% of sites made available for housing to be of less than 1 hectare.
- Requirements to make more intensive use of land.
- The Government is inviting views on allowing greater freedom to build upwards on existing buildings.
- Proposed reforms to the system of developer contributions centre on a number of changes to the Community Infrastructure levy to make it more responsive to market conditions, including indexation to local house prices.

### Background

The Housing White Paper *Fixing our broken housing market*, published in February 2017, proposed a number of changes to national planning policy to help increase the number of homes being built. Annex A to the White Paper was a consultation on some of these proposals. Further detail of the proposed changes was included in a consultation paper, *Planning for the Right Homes in the Right Places*, issued in September 2017. In November 2017, the Budget proposed further changes, together with the official adoption of an annual target of 300,000 net additions to the housing stock to be achieved by the end of the current Parliament. These have now been incorporated in a revised draft of the National Planning Policy Framework, which also includes revisions reflecting changes to planning policy implemented through Written Ministerial Answers, and case law concerning interpretation of policy since the first NPPF was published in 2102. The consultation also covers some draft updates to online Planning Policy Guidance. Views are also invited on further changes to planning policy the Government is minded to make.

A separate consultation covers reform of the system of developer contributions, as announced in Budget 2017, to be implemented through regulations.

Links to the current consultations are here:

- National Planning Policy Framework consultation  
<https://www.gov.uk/government/consultations/draft-revised-national-planning-policy-framework>

- Reform of the system of developer contributions

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/686878/Developer\\_Contributions\\_Consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/686878/Developer_Contributions_Consultation.pdf)

Links to relevant previous consultations, as described above, are here:

- National Planning Policy: consultation on proposed changes (December 2015): <https://www.gov.uk/government/consultations/national-planning-policy-consultation-on-proposed-changes>
- Housing White Paper (February 2017): <https://www.gov.uk/government/publications/fixing-our-broken-housing-market>
- Planning and Affordable Housing for Build to Rent – a consultation paper (February 2017): <https://www.gov.uk/government/consultations/planning-and-affordable-housing-for-build-to-rent>
- Planning for the right homes in the right places: consultation proposals (September 2017): <https://www.gov.uk/government/consultations/planning-for-the-right-homes-in-the-right-places-consultation-proposals>

## **National Planning Policy Framework – summary of proposed revisions**

The main changes directly relevant to housing are:

### **Chapter 1 Introduction**

Paragraph 6 clarifies that endorsed recommendations of the National Infrastructure Commission may be material when preparing plans or determining applications.

### **Chapter 2 Achieving sustainable development**

The wording of the presumption in favour of sustainable development (paragraph 11) has been reordered to reflect the way that plan and decision-making are approached in practice. The draft text also sets out an expectation for objectively assessed needs to be accommodated unless there are strong reasons not to, including any unmet needs from neighbouring areas.

### **Chapter 3 Plan-making**

The Housing White Paper proposed a number of changes to plan-making policy, which build on the changes in law introduced through the Neighbourhood Planning Act 2017. These are reflected in the plan-making chapter as follows:

- a) a new plan-making framework which defines strategic priorities and allows authorities to plan for these in the most appropriate way;
- b) amendments to the tests for a ‘sound’ plan, to make clear that it should set out ‘an’ appropriate strategy rather than ‘the most appropriate strategy’ (to avoid the need for disproportionate work to demonstrate that a strategy is optimal);

- c) enabling spatial development strategies to allocate sites if there is unanimous agreement;
- d) a new requirement for authorities to review plan policies every five years following the date of adoption, with updates, if necessary, to reflect changing circumstances;
- e) tightening the evidence which is expected in respect of both local and strategic policies to support a 'sound' plan, to allow for a more proportionate approach; and
- f) introducing the expectation that plans should use digital tools to assist consultation and presentation of policies.

The *Planning for the right homes in the right places* consultation also proposed changes that are reflected in the chapter. These are:

- a) setting out that to meet the test of soundness authorities, when preparing plans, will need to prepare and maintain a statement of common ground, as evidence (where appropriate) of the statutory duty to cooperate;
- b) changing the 'effective' and 'positively prepared' soundness test so that these more clearly encourage agreements and joint working; and
- c) a new approach to viability, through which plans are expected to be clear about the contributions expected in association with development. This will help ensure that requirements on developments set through plan policies are deliverable, more transparent and provide more certainty about what will be expected at the decision-making stage .

Paragraph 23 reflects changes to the Town and Country Planning (Local Planning) (England) Regulations 2012 which come into force on 6 April 2018, requiring local planning authorities to review their local plans every five years from adoption. Under the Neighbourhood Planning Act 2017, local planning authorities must consider whether to revise the document following such a review, and publish their reasons if they decide not to do so.

The revised text also proposes these policy changes:

Paragraph 21 expects strategic policies to be distinguished clearly in plans, to allow clear scope for local policies to be formulated.

Further changes are also proposed to the tests of 'soundness', to:

- a) ensure a consistent approach to examination, by extending their application to all strategic and local plans, so that policies in a spatial development strategy are assessed against the same criteria as strategic policies in a local plan;
- b) amend the 'positively prepared' soundness test to emphasise the role of plans in meeting objectively assessed needs for housing;
- c) strengthen the 'effective' soundness test to emphasise effective joint working, as evidenced by the Statement of Common Ground which enables authorities to record where agreements have and have not been reached; and

d) make clear that the tests will be applied proportionately to local policies according to the extent to which they accord with strategic policies.



## **Chapter 4 Decision-making**

The revised text reflects these previous announcements or consultation proposals:

Paragraph 58 takes forward the reforms to viability assessment proposed in the *Planning for the right homes in the right places* consultation. The policy makes clear that where a proposed development accords with all relevant policies in the plan there is no need for a viability assessment to accompany the planning application. This should speed up the decision-making process by reducing scope for delay caused by negotiation of developer contributions. The policy also expects all viability assessments to reflect the Government's recommended approach which is set out in draft revised national planning guidance published alongside the Framework.

In support of the revised Framework, draft national planning guidance says that plans should define circumstances in which viability assessment is carried out at the decision-making stage. The guidance gives some illustrative examples of circumstances which plan makers could identify as requiring viability assessment at the decision-making stage.

The guidance says plans can set out when and how review mechanisms may be used to amend developer contributions to help account for significant changes in costs and values and provide certainty through economic cycles. Plans can set out how review mechanisms will be used to identify any significant increase in the overall value that occurs over the lifetime of a large or multi - phased development, and how that increase in value will be apportioned between the local authority and the developer to provide more certainty for delivering supporting infrastructure.

## **Chapter 5 Delivering a wide choice of high quality homes**

The revised text reflects these previous announcements or consultation proposals:

This chapter implements a number of proposals from the previous housing White Paper and *Planning for the right homes in the right places* consultations.

Paragraph 61 introduces a new standard method for the calculation of local housing need. The details of the standard method are set out in draft revised national planning guidance published alongside the Framework.

Paragraph 62 makes clear that there should be clear policies for addressing the housing requirements of groups with particular needs. Students and travellers have been added to the list, as have people who rent their homes to reflect the outcomes of the *Planning and Affordable Housing for Build to Rent* consultation in February 2017.

Paragraph 65 implements the housing White Paper proposal that at least 10% of homes on major sites should be available for affordable home ownership, with certain exemptions.

Paragraphs 66 - 67 introduce an expectation that local authorities should provide a housing requirement figure for designated neighbourhood areas.

Paragraphs 69 - 70 take forward the housing White Paper proposals to encourage greater use of small sites, to help diversify opportunities for builders and increase the number of schemes that can be built - out quickly. Following Budget 2017 the draft text proposes that local planning authorities should ensure that at least 20% of the sites allocated for housing in their plans are of half a hectare or less. However, the Government is open to views as to whether this is the most appropriate threshold for ensuring a good supply of small sites while not slowing plan production, or whether a broader approach should be taken (which could include measures to promote more medium sized sites as well). It asks whether:

- a) the proportion of allocations should relate to the number of sites allocated as currently proposed, the number of sites identified in these and other ways (such as through brownfield registers), or the overall number of homes to be provided for;
- b) the most appropriate size threshold to ensure that a suitable mix of small and medium sized sites comes forward; and
- c) the most appropriate percentages to apply.

Paragraphs 74(c), 75 and 77 set out the policy consequences of the new Housing Delivery Test. Footnote 29 proposes that from 2020, the presumption in favour of sustainable development will apply where delivery is below 75% of the authority's housing requirement. The proposed threshold of 75% was announced at Budget 2017. The local government finance settlement technical consultation in September 2017 on New Homes Bonus revision, set out that the Government intends to go further in 2019-20. This could include linking payment of the bonus to the housing delivery test or the standard approach to local housing need. The Government would consult on any further changes to the bonus before proposed implementation in 2019-20.

Paragraph 76 takes forward the housing White Paper proposal that the 5-year land supply position should be capable of being agreed for a one-year period. The policy proposes that this should be demonstrated either through a recently adopted plan, or through a subsequent annual position statement. The minimum 10% buffer required in order for local authorities to take advantage of this policy is set out in paragraph 74(b).

Paragraph 78 provides that authorities should consider imposing a planning condition to bring forward development within two years, except where a shorter timescale could hinder the viability or deliverability of a scheme. It also encourages local planning authorities to consider why major sites have not been built out when considering subsequent planning applications.

The revised text also proposes these policy changes:

Paragraph 72 reflects the announcement at Budget 2017 that the Government would consult on allowing the development of exception sites to provide entry-level homes suitable for first-time buyers, where a local need is identified.

## **Chapter 8 Promoting healthy and safe communities**

The revised text reflects these previous announcements or consultation proposals:

Paragraph 94 reflects the Housing White Paper proposal that policies and decisions should consider the social and economic benefits of estate regeneration, and that authorities should use their planning powers to help deliver estate regeneration to a high standard.



## **Chapter 11 Making effective use of land**

The revised text reflects these previous announcements or consultation proposals:

This chapter combines existing policy with a number of proposals from the Housing White Paper or and previous consultations. The Housing White Paper proposals include:

- a) expecting plans to have a clear strategy for using land (paragraph 117);
- b) making more intensive use of existing land and buildings (paragraph 118 d-e);
- c) avoiding building homes at low densities in areas of high demand, and pursuing higher - density housing in accessible locations, while reflecting the character and infrastructure capacity of each area (paragraph 123); and
- d) taking a flexible approach to policies or guidance that could inhibit making effective use of a site – although the proposed policy now refers specifically to daylight and sunlight issues, as these are considered to be the most relevant consideration in this context (paragraph 123 c ).

The text also reflects the White Paper proposal to give great weight to the value of using suitable brownfield land within settlements for homes (paragraph 118 c) – although to give further emphasis this has been amended to substantial weight – and reflects the Written Ministerial Statement of 5 February 2018 on building upwards (paragraph 118 e ).

The revised text also proposes these policy changes:

Budget 2017 set out a number of additional proposals to make more land available for housing, especially in areas of high demand, a number of which are reflected in this chapter. These changes include:

- a) making more effective use of empty space above shops – with the proposed policy widening this to refer to other situations where under-utilised land and buildings could be used more effectively (paragraph 118 d);
- b) reallocating land where there is no reasonable prospect of an application coming forward for the allocated use – with the proposed policy also setting out how alternative uses should be considered ahead of a plan review taking place (paragraph 120);
- c) making it easier to convert retail and employment land to housing where this would be a more effective use (paragraph 121); and
- d) expecting minimum density standards to be used in town and city centres and around transport hubs – the proposed policy (paragraph 123 a ) applying this principle to areas where there is a shortage of land for meeting identified development needs, extending the principle to town centres, and indicating that standards should seek a significant uplift in

prevailing densities, unless this would be inappropriate. Paragraph 123 b also proposes that minimum densities should be considered in other parts of the plan area.



Building on these changes, paragraph 123c also proposes that local planning authorities should refuse applications which they consider fail to make effective use of land, in areas where there is an existing or anticipated shortage of land for meeting identified housing needs.

## **Chapter 12 Achieving well-designed places**

The revised text reflects these previous announcements or consultation proposals:

Paragraphs 124-125 reflect the White Paper proposals that plans should, at the most appropriate level, set out a clear design vision and expectations, supported by visual tools such as design guides and codes. The revised text also reflects the White Paper proposal that widely accepted assessment frameworks such as Building for Life should form part of the ‘toolkit’ used by authorities in assessing design (paragraph 128).

Additional emphasis has been placed on the importance of pre-application discussions in securing good design (paragraph 127). The text also implements the White Paper proposal that design should not be used as a reason to object to development where the scheme complies with local policies (paragraph 129).

The revised text also proposes these policy changes:

As a consequence of the above, the text at paragraph 130 has been revised to make clear that “outstanding or innovative designs” should not be given great weight where they are in conflict with local design policies, or would not be sensitive to their surroundings.

## **Chapter 13 Protecting the Green Belt**

The Framework maintains the strong protections of the Green Belt and retains a high bar before Green Belt land may be released. Paragraphs 136 -137 implement the Housing White Paper proposals that certain criteria should be satisfied before ‘exceptional circumstances’ are used to change Green Belt boundaries, and that where Green Belt is released first consideration should be given to land which has been previously-developed or which is well-served by public transport.

The Housing White Paper also proposed a number of other changes to Green Belt policy that are reflected in the chapter – to:

- a) make clear that neighbourhood plans may amend detailed Green Belt boundaries, once the need for a Green Belt change has been demonstrated (paragraph 135);
- b) expect policies to set out how the impact of removing land from the Green Belt can be offset (paragraph 137); and

The revised text also proposes these policy changes:

Paragraph 144g reflects the proposal in the December 2015 consultation to allow brownfield land in the Green Belt to be used for affordable housing, where there is no substantial harm to openness.

The proposal broadens the previous proposal to allow brownfield land in the Green Belt to be used for Starter Homes so that, subject to Green Belt protections, all residential developments that contribute to meeting an identified local affordable housing need can use brownfield land, allowing local planning authorities to use this land more flexibly in response to local circumstances.

Current policy allows buildings in the Green Belt in association with uses such as outdoor sport and cemeteries, but does not allow material changes in the use of land for such purposes, even if there would be no harm to openness. To allow a more consistent approach, paragraph 145e provides that material changes of use that preserve openness are not inappropriate development in the Green Belt. In addition, paragraphs 144b and 144f make clear that facilities for burial grounds and allotments, and rural exception sites, are not inappropriate development.

### **Transitional arrangements and consequential changes**

The revised text proposes these policy changes:

The Housing White Paper set out transitional arrangements for the application of the presumption in favour of sustainable development as applied through the consequences of the Housing Delivery Test. These step the application from delivery of less than 25% of the housing requirement in 2018 and 45% in 2019. From 2020 it will be introduced from 75%, as announced at Budget 2017.

To reflect the policy on neighbourhood plans set out in the Written Ministerial Statement of 12 December 2016, neighbourhood plans which are more than two years old will also be covered by the policy at paragraph 14 of the revised Framework until 12 December 2018.

### **Going further**

At Budget 2017 the Government set out an ambition to put England on track to deliver 300,000 new homes a year. The Government is considering what further planning reforms could support this ambition.

The use of permitted development rights to create new homes has played a vital part in increasing housing delivery in recent years. Since April 2015, permitted development rights have created over 30,000 new homes through changes of use from offices, agricultural, retail and other buildings. The Government is interested in finding more solutions to making the most of the spaces we have in delivering the homes we need in the right places.

A Written Ministerial Statement on 5 February 2018 made clear that planning policies and decision should allow the use of airspace above existing residential and commercial premises to create new homes. This approach makes sure that we are using the space we have available efficiently and reduces the need to build out. The Government is exploring what opportunities there are to further support this approach through a new permitted development right for upwards extensions for new homes where existing buildings are lower than the prevailing roofline. This would be subject to engagement with neighbours. A

future consultation will seek views on where best this permitted development right should be applied.



The revised Framework recognises the importance of making the most of existing spaces, making clear that plans should seek more intensive use of existing land and buildings and include minimum density standards in town and city centres and around transport hubs. The Government does however recognise that there are locations where meeting needs through more effective use of urban land will not be possible, and in these instances, there will be a need to find extra land to deliver the homes needed locally.

## Consultation Paper: Supporting housing delivery through developer contributions



### Issues with the present system of developer contributions

The present system of developer contributions is based on section 106 agreements negotiated between developers and local authorities and the Community Infrastructure Levy (CIL) introduced in 2010. A Government review of these arrangements has identified a number of issues with the current system:

- Take up of CIL by local authorities has been patchy and it is administered differently in different areas.
- Section 106 negotiations can delay development.
- Developers can seek to reduce previously agreed section 106 obligations by arguing that they make development unviable.
- CIL is not responsive to market conditions.
- Current arrangements lack transparency – people do not know where or when the money is spent.
- Developer contributions do not enable infrastructure that supports cross-boundary planning.

### Objectives of the proposed reforms

Objectives of the proposed reforms are to make the system more transparent and accountable by:

- Reduce complexity and increasing certainty for local authorities and developers.
- Supporting swifter development through focusing viability assessment on plan-making rather than decision-making on individual planning applications.
- Increasing market responsiveness so that local authorities can better target increases in value, while reducing risks for developers in an economic downturn.
- Improving transparency for communities and developers over where contributions are spent and expecting all viability assessments to be publicly available except for some very limited circumstances.
- Allowing local authorities to introduce a Strategic Infrastructure Tariff to help fund or mitigate strategic infrastructure.

### Detailed proposals

**CIL:** the Government proposes:

- To ensure that the requirements for setting and revising a CIL charging schedule are proportionate by replacing the present statutory consultation requirement with a more flexible requirement.
- Streamline the process for local authorities to set and revise CIL charging schedules.
- To make a number of improvements to the operation of CIL.
- To remove the current restriction on pooling section 106 contributions in areas that have adopted CIL, or where CIL cannot feasibly be charged.

- To allow CIL charging schedules to be set based on the existing use of land to allow local authorities to better capture an amount that reflects the value generated through planning permissions.
- To simplify the charging of CIL on complex sites.
- To index CIL charges on residential development to regional or local authority house prices.

**Viability assessments:** revisions to the NPPF aim to improve viability assessment in plan making to ensure that where a proposed development accords with all relevant local plan policies there is no need for a separate viability assessment to accompany a planning application.

**Transparency:** the Government proposes to amend the current regulatory requirements for CIL to require the publication of Infrastructure Funding Statements that explain how the spending of any forecast income from CIL or section 106 agreements will be prioritised and to monitor funds received and their use.

**Strategic Infrastructure Tariff:** combined authorities and joint committees which have strategic planning powers are proposed to get the same powers as the Mayor of London to levy a CIL for strategic infrastructure.