

The Government published its long awaited final version of the National Planning Policy Framework ('NPPF') on 27 March 2012. The Framework immediately replaces over a thousand pages of existing national guidance with around fifty and will guide the preparation of Local Plans and the determination of planning applications.

The presumption in favour of sustainable development

The NPPF contains a presumption in favour of sustainable development which is intended to increase the number of permissions granted. The Government has responded to requests for a definition of sustainable development by saying that the policies contained in the Framework as a whole 'constitute the Government's view of what sustainable development in England means in practice for the planning system'.

The original draft NPPF required decision takers to assume that the default answer to development proposals is 'yes', but this has been removed from the final version. Instead, it reaffirms the principle set out in statute that Local Plans should be the starting point for planning decisions. The presumption in favour of sustainable development applies where proposals accord with the Local Plan, or where a Local Plan is 'absent, silent or relevant policies are out-of-date'.

Transitional arrangements

Local authorities will be entitled to give full weight to policies adopted since 2004 for the first 12 months, as long as there is only a 'limited degree' of conflict with the Framework. Following the 12 month period, the weight to be given to adopted policies will depend on their degree of consistency with the Framework.

These transitional arrangements are to be welcomed as the vast majority of local authorities do not currently have an up to date Local Plan. However, it is questionable whether 12 months will be long enough, particularly given that Local Plans are likely to be more voluminous due to the slimming down of national, and the loss of regional, planning policy.

In the meantime, the NPPF presents opportunities for promoting sustainable development where the development plan is outdated or incomplete. However, the NPPF is also full of uncertainties, not least due to the lack of a definition of 'sustainable'. It is also unclear exactly how far an adopted plan can conflict with the Framework before it is disregarded. It is likely to take time before a coherent and consistent approach to the presumption in favour of sustainable development, and how it relates to the policies set out in Local Plans, emerges with the risk that this will lead to an element of 'planning by appeal' in the interim.

Neighbourhood planning

The Government has sought to address concerns raised in relation to the draft NPPF in terms of the relationship between Local Plans and neighbourhood plans in the final version. The Framework clarifies that it is only once a neighbourhood plan has demonstrated its general conformity with the strategic policies of the Local Plan and is brought into force that its policies take precedence, and it is only the non-strategic policies it takes precedence over. It also sets out what the strategic priorities of Local Plans must include. However, it still seems likely that there will be uncertainty as to what constitutes a strategic policy, and what constitutes 'in general conformity' with such a strategic policy, and therefore the potential for disputes as to when a neighbourhood plan takes precedence.

Protection of the countryside

The Government has given some ground on the demands of environmental groups to keep protection for the 'ordinary' countryside not covered by such designations as Green Belts or national parks. Local authorities will need to recognise the 'intrinsic character and beauty of the countryside' when making planning decisions. However, they have stopped short of reiterating the presumption against development in open countryside away from existing settlements previously set out in national planning guidance.

National planning policy (PPS3) previously contained a target for 60% of housing to be on previously developed land but this remains absent from the final NPPF. Instead, local authorities are urged to 'encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value'. It also allows local authorities to continue to consider setting a locally appropriate target for the use of brownfield land. This is a significant concession to environmentalists who had expressed concerns regarding the loss of the 'brownfield first' policy from the draft NPPF.

The NPPF will also protect the countryside by way of the 'town centre first' principle for main town centre uses. This has been strengthened since the draft version of the Framework and reintroduces office development to its scope. The NPPF states that local authorities 'should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered'. It adds that 'when considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre'.

The policy objectives set out in the NPPF largely reiterate previous national guidance (PPS2) on the protection of the Green Belt, although elements of it are more permissive of development. In particular, it allows communities to bring forward developments with considerable local support under a Community Right to Build Order. Local transport infrastructure may also be allowed, as will

extensions and alterations to any building (not just dwellings), and redevelopment of major developed sites not identified in the Local Plan.

Housing

The NPPF aims to 'boost significantly the supply of housing'. There is a requirement to have a rolling five year supply of deliverable sites to meet housing needs, which is the same as national guidance (PPS3) previously required. However, the NPPF requires an 'additional buffer of 5% (moved forward from later in the plan period)' increasing to 20% 'where there has been a record of persistent under delivery of housing'. This is a significant amendment to the original draft, which required an additional allowance of at least 20% in all cases. There is also greater scope in the NPPF for providing affordable housing off-site or via commuted payments, in contrast with the previous policy which included a strong presumption for on-site provision. The indicative national minimum size threshold for requiring affordable housing to be delivered (previously 15 units) is removed. The NPPF reintroduces the rural exceptions policy (which was absent from the draft) which allows small scale affordable housing to be built in rural settlements. However, local authorities are required to consider whether allowing some market housing would facilitate the provision of significant additional affordable housing to meet local needs in rural areas.

There is a notable new addition to the final NPPF which urges local authorities to 'normally approve planning applications for change to residential use and any associated development from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate'.

Economic growth

The Government is firmly committed to the view that good planning can help to drive and support sustainable economic development and this is emphasised throughout the NPPF. This includes

supporting 'the sustainable growth and expansion of all types of business and enterprise in rural areas'. Small scale offices and other small scale rural development are removed from the 'town centre first' policy.

The NPPF emphasises that development proposals should not be subject to such a scale of section 106 obligations and policy burdens that their viability is threatened. The NPPF states that the cost of any requirements applied to development should ensure that 'competitive returns' are still available for the land owner and developer. The Government has, however, sought to address criticisms raised at the consultation stage by making it clear that, where safeguards are necessary to make a particular development acceptable in planning terms, the development should not be approved if the measure required cannot be secured through appropriate conditions or agreements.

Conclusion

A great deal of criticism was levelled at the draft NPPF when it was put out to consultation in July of last year. Whilst some concessions have been made - particularly in terms of the protection of the countryside - the Government remains committed to pushing through its agenda in an effort to clarify the planning process and promote economic growth. Accordingly, the Framework will introduce new opportunities for development, although the uncertainties regarding some of its terminology are not to be understated. Ultimately, the effectiveness of the NPPF will depend on how it is interpreted in practice by local authorities and others involved in planning.

Deborah Sharples



**Partner
Cambridge**
01223 461155
deborahsharples@hewitsons.com

Gemma Dudley



**Senior Associate
Cambridge**
01223 461155
gemmadudley@hewitsons.com



We pride ourselves on delivering an outstanding service to a wide range of individuals, businesses and institutions including charities, educational and sports bodies. The firm's size and breadth of specialisms means each client receives the focus it requires. We operate UK wide and have worldwide reach via our network of independent law firms, LawExchange International.

This document is written as an outline guide only and any action should not be based solely on the information given here. Appropriate professional advice should always be taken in specific instances.

Hewitsons LLP is authorised and regulated by the Solicitors Regulation Authority.