In its response to the consultation on the draft revised National Planning Policy Framework, the Government led with the need for more housing: “Our broken housing market is one of the greatest barriers to progress in Britain today. The Government wants to fix this and provide people with the opportunities and the security that come with a place to call their own. To do this we need to build many more of the right homes in the right places, whilst protecting the environment and providing the facilities and opportunities communities need.”

It goes on to say: “The Framework that comes into force today is a reflection of the engagement we have had with everyone seeking to improve the communities we live and work in. The reforms are ambitious, and will see us using land suitable for housing much more effectively, at the same time as protecting our valuable environmental assets for future generations.”

Much is made of the money that the Government has committed to increasing the supply of housing, but as ever the question is whether the hype surrounding these supposedly ambitious reforms is justified.

In this paper we look at six specific areas where the Framework has changed:

- Achieving sustainable development.
- Determining housing need and requirements.
- Assessing housing delivery.
- Viability.
- Green Belt.
- Achieving well designed places.

Achieving sustainable development

5. The Government has made minor changes to the wording of the three dimensions of sustainable development – economic, social and environmental – which are now called “overarching objectives”. But para 9 of NPPF2 makes clear that these objectives “should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged” (emphasis added). Therefore there is no need to address these objectives as though they were a supplementary or alternative test.

6. The Government has tinkered with the presumption in favour of sustainable development in what is now para 11 of NPPF2 (formerly para 14 in the NPPF), without significantly altering it. There are minor changes to the wording of the presumption as it applies to plan-making. The most substantial changes concern decision-taking, where applying the presumption has changed from:

- approving development proposals that accord with the development plan without delay; and

where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or

- specific policies in this Framework indicate development

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1 In this paper we refer to the revised National Planning Policy Framework as NPPF2.
7. To:

- c) approving development proposals that accord with an up-to-date development plan without delay; or
d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
  i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."

8. The criterion of “no relevant development plan policies” could be said to be broadly equivalent to an absent or silent development plan, but it will be a rare application where there are truly no relevant development plan policies. The new wording raises the question whether case law on the meaning of “silent” in this context carries across to the development plan policies. The

9. The new test of whether “the policies which are most important for determining the application are out-of-date” is ambiguously drafted (some things do not change). What if there are a number of important policies for determining an application, one of which is out of date and the others up to date? In this situation it could not be said that the policies which are most important for determining the application are (all) out-of-date.

10. However, it will no doubt be argued, indeed is being argued, that the test is whether [any of] the policies which are most important for determining the application are out-of-date, and we can look forward to another period of uncertainty while inspectors and then the courts grapple with this issue.

11. Footnote 6 of NPPF2 now exhaustively lists policies in the Framework that protect areas or assets of particular importance, which footnote 9 of the NPPF did not, effectively ending the significance of Hopkins Homes Ltd v SSCLG [2017] 1 WLR 1865 at paras 14 and 85 for this aspect of national policy.

12. Footnote 7 of NPPF2, which expands on the circumstances in which the most important policies are deemed to be out of date, does a similar job to that performed by para 49 of NPPF, in that it triggers the application of the tilted balance where the local authority cannot show an adequate five year housing land supply (considered further below). It also brings the tilted balance into play where the Housing Delivery Test indicates that the delivery of housing was less than 75% of the housing requirement over the previous three years (albeit subject to transitional arrangements discussed in more detail below).

13. Paragraph 14 gives a further steer on the application of the tilted balance to housing schemes that conflict with a neighbourhood plan, replacing the guidance in the Written Ministerial Statement on Neighbourhood Planning.

14. The paragraph states that “the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply:

- a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;
- b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;
- c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 73); and
- d) the local planning authority’s housing delivery was at least 45% of that required9 over the previous three years."

Determining housing need and requirements

Central objective remains – to significantly boost the supply of housing

15. The revised Framework reiterates the Government’s central objective of “significantly boosting the supply of homes” (NPPF2, para 59). If anything, the objective is strengthened in NPPF2 because, whereas para 47 of the NPPF arguably set out an exhaustive list of steps local planning authorities were required to take which would have resulted in the objective being achieved, it is now (if it was not before) plainly a freestanding objective enshrined in national policy. That being the case, there can be little argument that this objective is an important material consideration for both plan-makers and decision-takers.

16. Moreover, we have some meat on the bones of what is meant by ‘significantly boosting’. In the Planning for Right Homes in Right Places consultation, and now repeated in the updated PPG, it is the Government’s stated intention to ensure that

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1 See Bloor Homes East Midlands v SSCLG [2014] EWHC 754 (Admin) – “I do not think a plan can be regarded as ‘silent’ if it contains a body of policy relevant to the proposal being considered and sufficient to enable the development to be judged acceptable or unacceptable in principle” (para 50).
2 This is subject to the transitional provisions in para 214.
3 Housing Need Assessments, which refers to the Government’s consultation response to the Draft NPPF.
300,000 homes are built per year by the mid-2020s.

**Full, Objectively Assess Need (FOAN) replaced by Local Housing Need Assessment**

17. Although NPPF2 requires strategic policies of local plans to seek to meet objectively assessed needs for housing and other uses¹, in terms of housing at least, the concept of "full, objectively assessed needs" (NPPF, para 47) has been replaced by the concept of "local housing need" (NPPF2, para 60).

18. Local housing need is defined in the Glossary to NPPF2 as: "the number of homes identified as being needed through the application of the standard method set out in national planning guidance, or a justified alternative approach".

19. The change is not just one of semantics.

20. The primary purpose of the change may have been to introduce a prescriptive method of calculating the housing need in local authority areas (by way of the "standard method"; to which we will return below), with the aim of reducing the scope for debate about the correct objectively assessed need at section 78 appeals, Local Plan examinations and beyond.

21. However, the change has also had the effect of fundamentally altering the nature of the assessment. Whilst assessing FOAN for the purposes of NPPF para 47 was said to be "policy-off" in the sense described by the Court of Appeal in *Hunston Properties*² and subsequent cases³, the "local housing need" figure is unarguably "policy-on": Indeed, it stipulates a method which is designed to achieve a top-down growth figure for England.

22. This much is underscored by the Government’s decision to consult on amendments to the standard method (a method which only came into force in July 2018, and which does not yet apply to plan-making⁴) in light of the significant reduction in overall housing numbers which would be achieved by this method following the publication by the ONS of the 2016-household projections.

23. The consultation, which was published on 26 October and closes on 7 December, proposes amending the application of the standard method so that the 2014-based household projections, and not the most recently published 2016-based projections, are used. This is to ensure that the overall objective of building 300,000 homes per annum is achieved.

Thus the Government is taking an unambiguously (and unashamedly) 'policy-on' approach to housing 'need' with the consultation justifying the approach by explaining that "the historic under-delivery of housing means there is a case for public policy supporting delivery in excess of household projections, even if those projections fall."⁵

**What is the standard method (in its current guise)?**

24. The standard method (in its current guise) is set out in the PPG⁶. It replaces the detailed PPG guidance on assessing housing need⁷. In summary, in its current form, it consists of three steps:

**Step 1 – Setting the Baseline.** Using the latest household growth projections⁸, calculate the projected average annual household growth over 10 year period (beginning with the current year).⁹

**Step 2 – Adjustment for affordability.** This is based on the area’s median work-based affordability ratios for the area. For each 1% increase in the ratio of house prices to earnings, where the ratio is above 4, the average household growth should be increased by a quarter of a percent. No adjustment is applied where the ratio is 4 or below. The formula is expressed as below:

\[
\text{Adjustment factor} = \left(\frac{\text{Local affordability ratio} - 4}{4}\right) \times 0.25
\]

**Step 3 – Capping the Increase.** A cap is then applied. This is 40% above one of the following figures: (a) where strategic policies for housing were adopted (or have been reviewed without needing updating) within the last five years, the average annual housing requirement figure set out in those figures; or (b) where strategic policies have not been adopted or reviewed within the last five years, the higher of (i) the projected household growth for the area over the 10 year period identified in step 1 or (ii) the average annual housing requirement figure set out in the most recently adopted strategic policies (if a figure exists).

**When will an alternative approach be justified?**

25. NPPF2 para 60 tells us that "exceptional circumstances" are required to justify an alternative approach to the standard method which "also reflects current and future demographic trends and market signals".

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¹ NPPF2, para 11, 23, 35(a) and 117.
² Hunston Properties Ltd v Secretary of State for Communities (2013) EWCA Civ 1610.
⁴ Under the transitional arrangements set out in Annex 1, where plans are submitted for examination on or before 24 January 2019 the policies in the original NPPF will apply.
⁶ NPPF2, para 11, 23, 35(a) and 117.
⁷ Under the transitional arrangements set out in Annex 1, where plans are submitted for examination on or before 24 January 2019 the policies in the original NPPF will apply.
⁸ For each 1% increase in the ratio of house prices to earnings, where the ratio is above 4, the average household growth should be increased by a quarter of a percent. No adjustment is applied where the ratio is 4 or below. The formula is expressed as below:

\[
\text{Adjustment factor} = \left(\frac{\text{Local affordability ratio} - 4}{4}\right) \times 0.25
\]

⁹ When will an alternative approach be justified?

10. The recent consultation proposes amending the PPG so that "in the short term" the 2014-based household projections are to be used when applying the standard method. The "short term" would appear to mean until the 2018-based household projections are released in 2020. If this becomes government policy, the change will apply to decision-taking from the day of publication and, in respect of plan-making, to all plans submitted for examination on or after 24 January 2019.

11. Previous PPG Methodology: assessing housing need (Reference ID: 2a-014-20140306 to Paragraph: 029 Reference ID: 2a-029-20140306).

12. The recent consultation proposes amending the PPG so that "in the short term" the 2014-based household projections are to be used when applying the standard method. The "short term" would appear to mean until the 2018-based household projections are released in 2020. If this becomes government policy, the change will apply to decision-taking from the day of publication and, in respect of plan-making, to all plans submitted for examination on or after 24 January 2019.

13. E.g. if household projections are 110,500 in 2018 and 120,000 in 2028, the total growth projections will be 9,500, and therefore 950 per year.
26. One circumstance which may be considered “exceptional” is if it can be shown that the household projections for a particular local authority area are flawed.

27. For example, some authorities have experienced issues with a phenomenon known as unattributed population change, which has led to examining inspectors accepting that the household projections for the local area are not robust, and should be departed from. Another example may be where a growth deal has reached the point where a participating LPA is committed to delivery of a specific number of houses greater than that determined using the standard method.

28. The recent consultation proposes amending the PPG to confirm that “lower numbers through [application of] the 2016-based projections do not qualify as an exceptional circumstance that justifies a departure from the standard methodology”.

Uplift in local housing need figure above standard method?

29. The methodology for assessing housing need in the original PPG required local planning authorities to consider, where appropriate, uplifting the household projections to reflect market signals. The new PPG eschews the notion of uplifting for ‘market signals’ (albeit this is partially reflected in the affordability uplift). However, the PPG does explain that the “government is committed to ensuring more homes are built and are supportive of ambitious authorities who want to plan for growth” and, in particular, notes that “where additional growth above historic trends is likely to occur over the plan period, an appropriate uplift may be considered.”

30. The PPG sets out a non-exhaustive list of examples of where this might be appropriate, includes:

   • Where growth strategies are in place.
   • Where strategic infrastructure improvements are planned that would support new homes.
   • Where an authority has agreed to take on unmet need from neighbouring authorities.

31. It is noticeable that both NPPF2 and the PPG are silent on how (or if) employment trends should be taken into account when calculating a local housing need figure. This is of significance given that under the original methodology the housing requirement figure established during the plan-making process was often driven by economic-led projections of housing need, rather than demographic-led projections (although the two are, of course, interrelated).

32. Notwithstanding the Government’s silence on this issue, in areas where the economic-led projection of housing need outstrips the local housing need figure identified by the standard method, it is at least arguable that this could justify an uplift on the basis that such projections demonstrate that “additional growth above historic trends is likely to occur over the plan period”.

The relationship of local housing need with the housing requirement figure

33. Just as in the original NPPF, where OAN was not to be equated with the final housing requirement, in NPPF2 the local housing need figure is not necessarily to be equated with the housing requirement figure.

34. Instead, we are told that “strategic policies should be informed by a local housing need assessment” (NPPF2 para 60), and that “strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period” (NPPF2 para 65).

35. Thus NPPF2 makes it clear that the plan-making process may well result in a housing requirement which is distinct from the local housing need figure.

36. There are potentially a number of ways in which it can be argued that the housing requirement figure should be increased above the local housing need figure for the area. These include the following:

   a. First, by meeting unmet needs that cannot be met within neighbouring areas. This is to be “accommodated where it is practical to do so and is consistent with achieving sustainable development” (NPPF2 para 35), a test not dissimilar to that in the original NPPF at para 182.

   b. Second, by seeking to address the needs of different groups in the community, particularly those who require affordable homes. Unfortunately, NPPF2 and the PPG remain far from clear in respect of this issue. On the one hand, NPPF2 does not require local plans to seek to meet the needs of such groups, stating only that within the context of the local housing need figure “the size, type and tenure of housing need for different groups in the community should be assessed and reflected in planning policies” (NPPF2 para 61) – ie there is no requirement that the plan should seek to meet their overall needs.

   This interpretation is supported by the PPG which explains

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14 How should market signals be taken into account? Original PPG, Paragraph: 019 Reference ID: 2a-019-20140306.
15 PPG When might a higher figure be considered necessary? Paragraph: 010 Reference ID: 2a-010-20180913.
16 The PPG explains that the uplift is “to identify housing need specifically and should be undertaken prior to and separate from considering how much of this need can be accommodated in a housing requirement figure”. This does not sit easily with the example of unmet need from neighbouring authorities, which self-evidently is not a component part of an identification of actual need for the area in question. Moreover, NPPF2, para 60 & 65 specifically treat unmet need of neighbouring authorities as an addition to, and separate from, the local housing needs figure for an area.
17 If there was any doubt about this it has been dispelled by the recent consultation which states in terms that “the standard method for assessing minimum housing need was designed to identify an appropriate level of need in a straightforward, transparent way. It does not represent a mandatory target for local authorities to plan for, but the starting point for the planning process” (para 15).
In order to justify a housing requirement figure below the local housing need figure, the tests in NPPF2 para 11 (the presumption in favour of sustainable development) are to be satisfied, that is if:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole:"

Housing delivery

Five year supply

The requirement for local planning authorities to identify five years’ worth of housing supply remains a central policy within NPPF2 (para 73). Moreover, the effect of not being able to demonstrate a five year supply continues: namely, that in determining planning applications the tilted balance applies (NPPF2 fn7 replacing NPPF para 49).

However, how the five year supply is to be calculated, and how it can be demonstrated, has been significantly altered. In summary the main changes are as follows:

a. First, the housing requirement against which the five year supply is to be assessed has been clarified. It is either (a) the housing requirement figure set out in adopted local plans, if those plans are less than five years old or if they have been reviewed and found not to require updating, or, in other cases, (b) the local housing need (NPPF para 73).

There is scope for argument as to exactly what is meant by “local housing need” in this context and, in particular, whether it is permissible to argue that a justified alternative to the standard method ought to be used and/or whether any uplifts (as described above) ought to be applied.

b. Secondly, as with the original NPPF, a buffer is to be applied, albeit this operates in a different – and again more prescriptive – manner than previously. One of three buffers applies:

- a 5% minimum buffer, to ensure choice and competition in the market for land.
- a 10% buffer, which applies if a local planning authority is seeking to demonstrate a five year supply through an annual position statement or a recently adopted plan (see below).
- a 20% buffer, which applies where there has been significant under delivery of housing over the previous three years. From November 2018, this will be measures against the Housing Delivery test (see below), and will apply where delivery was below 85% of the housing requirement.

c. Thirdly, whilst the definition/test of “deliverable” remains materially the same in NPPF2 as it was in NPPF, the (rebuttable) presumption as to when the test will be satisfied has been refined, and somewhat narrowed.

Instead of applying to all sites with planning permission, the presumption (which can be rebutted if there is clear evidence that homes will not be delivered within five years) applies only to (i) sites that are not major development and (ii) sites with detailed planning permission.

The NPPF2 then states that “Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear

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14 PPG, How does the housing need of particular groups relate to overall housing need calculated using the standard method? (Paragraph: 020 Reference ID: 2a-020-20180913). It also explains that “the need for housing for particular groups of people may well exceed, or be proportionally high in relation to, the overall housing need figure calculated using the standard method. This is on the basis that the needs of particular groups will often be calculated having consideration to the whole population of an area as a baseline as opposed to the projected new households which form the baseline for the standard method”.

15 The PPG has clarified both (i) that where the plan has a stepped trajectory, the five year land supply is measured across the plan period against the specific stepped requirements for the particular 5 year period and (ii) where the plan’s housing requirement is expressed as a range, the 5 year land supply will be measured against the lower end of the range. (Paragraph: 033 Reference ID: 3-033-20180913 and Paragraph: 035 Reference ID: 3-035-20180913 respectively).

16 The definition of ‘local housing need’ would suggest that the justified alternative could be used, although the PPG states that “the starting point for calculating the 5 year land supply will be local housing need using the standard method”. However, the recent consultation proposes amending the definition of ‘local housing need’ to emphasise that it is only as part of the plan-making process that a justified alternative to the standard method may be applied. This still leaves room for arguing that uplifts to the standard method (as described above) might be justifiable even as part of the decision-taking process.

17 To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years.

18 Development of less than ten homes and the site has an area of less than 0.5 hectares.
d. Fourthly, the NPPF2 has introduced two ways in which a local planning authority will be deemed to have demonstrated a five year supply of housing:

- The first way of conclusively demonstrating a five year supply where it has been established in a "recently adopted plan". The definition of "recently adopted" (NPPF fn 38) is of some interest21. It would appear that a plan can be considered as 'recently adopted' – and thus the five year position fixed - for as little as six months, or as long as 18 months – depending solely on when exactly in the year the plan is adopted!

- The second way is through an 'Annual Position Statement' (APS). The PPG gives guidance as to what must be included within such statements23. An LPA wishing to proceed with this process is required to engage with stakeholders (including developers, land promoters, and land owners) to inform their assessment, before submitting the APS to PINS by 31 July (with a base date of 1 April). PINS will assess the APS based on written material provided by the authority, before issuing their recommendation in October. If confirmed, the five year land supply position will be fixed until the following October.

40. It remains to be seen how many authorities take up the opportunity presented by APSs. It is something of a double-edged sword given that, if the APS is not confirmed, it will may be hard for the LPA to persuade Inspectors at s.78 inquiries for the next year that they have a five year housing land supply. On the other hand, there are also risks for developers/land owners, particularly because the process will be undertaken by written submissions from the local planning authority, with no other party having any opportunity to make representations directly to PINS. Thus, in order to test the LPA's delivery assumptions, it will be important for developers/owners to participate in whatever engagement exercise is undertaken by the LPA.

Housing Delivery Test

41. The Housing Delivery Test (HDT) is a wholly new concept not previously found in the original NPPF. In short, it is a test administered by the Secretary of State which examines the record of individual local planning authorities meeting their housing requirements in the preceding three years. The results of the test are to be published annually, starting in November 2018. Save for circumstances in which a new local housing requirement figure is adopted in a Local Plan, the results will remain valid for a year.

42. The method of calculating the HDT is set out in the HDT measurement rule book25. Given that it is administered by central government, seemingly without any possibility for direct participation by the development industry, the details of the methodology are beyond the scope of this paper.

43. However, the ramifications of the HDT are significant, particularly for those promoting housing development. The ramifications are threefold:

a. If housing delivery falls below 95% of housing requirement, the LPA is required to publish an action plan.

b. If housing delivery falls below 85% of housing requirement, a 20% buffer is applied to the LPA's five year land supply housing requirement (see above).

c. If housing delivery falls below 75%, the presumption in favour sustainable development applies (see fn7). However, crucially this is subject to lengthy transitional arrangements.

44. At least on its face the requirement to produce an action plan would appear to lack teeth. Although stakeholders are required to be involved in the process, there is no requirement to consult on the action plan, the guidance in the PPG merely advises on what 'could' be included, and responsibility for monitoring lies solely with the LPAs.

45. Setting the threshold at which the 20% buffer kicks in at 85% of the housing requirement may well have the (presumably unintended) consequence of improving some LPAs five year housing land supply positions. Indeed a recent study by Indigo Planning27 has indicated that a number of authorities who would have been facing a 20% buffer under the original NPPF approach of "persistent under delivery", will become five percent authorities under the new approach.

46. However, the third ramification of the HDT process is of particular significance. It provides a wholly new gateway into the tilted balance and, importantly, one which should be incontrovertible (unlike questions about whether an LPA has a five year housing land supply and whether policies are out of date). If an LPA is deemed by central government to have delivered less than 75% of its housing requirement...
over the last three years, the tilted balance will automatically apply to all applications and appeals considered during that year (unless a new housing requirement figure is established within a newly adopted Local Plan).

47. However, the transitional provisions means that the bite of the HDT is, at least for now, much reduced. During the transitional arrangements (NPPF2 para 215) this gateway into the presumption will only apply where the HDT results published in:

a. November 2018 indicate that delivery was below 25% of housing required over the previous three years.

b. November 2019 indicate that delivery was below 45% of housing required over the previous three years.

c. November 2020 and in subsequent years indicate that delivery was below 75% of housing required over the previous three years.

Viability

48. The Government’s intention as expressed in NPPF2 is that viability should be determined during the plan-making process, with viability assessments at the application stage very much the rare exception. The Government also expects all viability assessments to follow a recommended approach. This marks a change both in emphasis and substance from the original policy and guidance, which had indicated that:

“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking” (NPPF para 173).

“The National Planning Policy Framework policy on viability applies also to decision-taking. Decision-taking on individual schemes does not normally require an assessment of viability. However viability can be important where planning obligations or other costs are being introduced. In these cases decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote economic growth. Where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible.” (PPG para: 001 Reference ID: 10-001-20140306).

“Decision-taking on individual applications does not normally require consideration of viability. However, where the deliverability of the development may be compromised by the scale of planning obligations and other costs, a viability assessment may be necessary.” (PPG para: 016 Reference ID: 10-016-20140306).

“There is no standard answer to questions of viability, nor is there a single approach for assessing viability. The National Planning Policy Framework, informed by this guidance, sets out the policy principles relating to viability assessment. A range of sector led guidance on viability methodologies in plan making and decision taking is widely available.” (PPG para: 002 Reference ID: 10-002-20140306).

49. Thus in any case where a planning obligation or other cost potentially affected the viability of a proposal, it was open to the applicant to seek to rely on a viability assessment to justify a departure from policy. How that assessment was carried out was left up to the applicant.

50. The position now is expressed, in the context of planning conditions and obligations, in para 57 of NPPF2 which states:

“When up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.”

51. The revised PPG issued on 24 July 2018 goes on to say:

“The role for viability assessment is primarily at the plan making stage. Viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan.

Policy requirements, particularly for affordable housing, should be set at a level that takes account of affordable housing and infrastructure needs and allows for the planned types of sites and development to be deliverable, without the need for further viability assessment at the decision making stage.

It is the responsibility of site promoters to engage in plan making, take into account any costs including their own profit expectations and risks, and ensure that proposals for development are policy compliant. The price paid for land is not a relevant justification for failing to accord with relevant policies in the plan.” (PPG para: 002 Reference ID: 10-002-20180724).

52. The PPG make clear that assessing the viability of plans does not require individual testing of every site or assurance that individual sites are viable. Instead viability for different types of development should be assessed based on shared

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28 See the PPG at para: 010 Reference ID: 10-010-20180724 onwards.
charactersitics and assumptions, although key sites may require individual appraisal (see para 003 Reference ID: 10-003-20180724 onwards).

53. The Government is unambiguous about the need for owners and developers to engage in viability assessment while local plans are being prepared:

“...the responsibility of site promoters to engage in plan making, take into account any costs including their own profit expectations and risks, and ensure that proposals for development are policy compliant. It is important for developers and other parties buying (or interested in buying) land to have regard to the total cumulative cost of all relevant policies when agreeing a price for the land. Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan.” (PPG para: 006 Reference ID: 10-006-20180724).

54. Accordingly, “where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage” (same).

55. The revised PPG provides the following illustrative list of circumstances where individual site viability should be assessed:

- Where development is proposed on unallocated sites of a wholly different type to those used in viability assessment that informed the plan.
- Where further information on infrastructure or site costs is required.
- Where particular types of development are proposed which may significantly vary from standard models of development for sale (for example build to rent or housing for older people).
- Where a recession or similar significant economic changes have occurred since the plan was brought into force.

56. Plainly the Government wishes to cut down the opportunity and scope for argument about viability. Where viability is in issue, the parties will need to follow the same “recommended approach” to its assessment.

Green Belt

57. Green Belt policy remains largely unchanged in NPPF2, albeit the structure of the relevant Chapter (now Chp. 13) is more clearly divided into plan-making and decision-taking sections. In particular, the ‘fundamental aim’ (para 133); the five purposes (para 134); the test for establishing New Green Belt (para 135); the definitional harm caused by inappropriate development (para 143); the Very Special Circumstances test (para 145); and most of the definitions of ‘not inappropriate’ development (para 145-6) remain materially the same.

58. That the central tenets of Green Belt policy remain unchanged is, perhaps, unsurprising given the longevity of the policy (three of the five main purposes having been established for over 60 years\(^\text{30}\), and the remaining two for over 20 years\(^\text{31}\)), and the continuing value that the general public (and their Parliamentary representatives) place on the protection of the Green Belt.

59. There are, however, a few significant tweaks to Green Belt policy found in NPPF2.

60. In terms of plan-making, it would appear that the bar for amending the boundaries of an existing Green Belt has been raised. Whilst the test remains one of “exceptional circumstances” (para 136), NPPF2 now prescribes steps which must be taken before it can be concluded that this test is satisfied. In particular, para 137 requires the plan-making authority to “demonstrate that it has examined fully all other reasonable alternative options for meeting its identified need for development”.

61. As part of the assessment of whether reasonable alternative options have been considered, the examination will have regard to whether the plan’s strategy: (a) makes as much use as possible of suitable brownfield sites and underutilised land; (b) optimises the density of development in line with the policies in chapter 11 of the Framework; and (c) has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development.

62. NPPF2 also allows detailed amendments to boundaries of the Green Belt to be made through non-strategic policies, including neighbourhood plans, but importantly only where the need for changes has already been established through strategic policies (para 136). Thus, where the principle of making boundary changes has been established through an adopted Local Plan, the detail of the exact boundary change can be implemented through non-strategic policies in a later development plan document, including a neighbourhood plan.

63. In terms of decision-taking there are two changes which are of note, both of which relate to the definition of inappropriate development.

64. First, whilst construction of new buildings ordinarily constitutes inappropriate development, there are exceptions to this rule (NPPF2 para 145). Most of the exceptions remain
the same as in the original NPPF, however the NPPF2 also permits, as an exception, limited infilling or partial or complete redevelopment of previously developed land (PDL) which would “not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority” (NPPF2, para 145(g)).

65. Whilst the exact scope of this exception will no doubt be tested at s.78 appeals and ultimately in the courts, on its face this additional exception is potentially significant. This is particularly the case given:

a. The exception applies both to infill developments (the exact scope of which is matter of judgment in a particular case) and to partial or complete redevelopment of PDL.

b. It is at least arguable that the requirement for the development to “re-use previously developed land” would be satisfied by part of the development re-using such land.

c. Many authorities have an identifiable affordable housing need and in many cases the housing requirement established in even post-NPPF plans will come nowhere near to meeting that need.

d. The development merely has to “contribute to meeting an identified affordable housing need”. Thus it would appear that a housing scheme which promotes a mix of market and affordable housing would satisfy this criterion.

e. NPPF2 expands the definition of affordable housing, such that it now captures a broader range of housing, including “starter homes”, “discounted market sale housing” and “other affordable routes to home ownership”.

f. The limiting criterion is not “no greater impact on openness” (as was applied to limited infilling in the original NPPF) but no “substantial harm to openness”. Whilst a matter for judgement in any given case, this criterion should be easier to satisfy.

66. Second, the (closed) list of developments which are defined as not inappropriate (NPPF2 paras 145, 146) has been expanded to include material changes in the use of land, so long as they preserve the openness of the Green Belt and do not conflict with its purposes. This reverses the effect of R(on the application of Timmins) v Gedling BC in which the original NPPF had been interpreted as deeming material changes in the use of land to be inappropriate development.

Achieving well-designed places

67. The importance of design to the planning system has fluctuated over the years, reaching its nadir (for some) with the publication of Circular 22/80 in 1980. Things have changed since then and good design has been an objective of Government planning policy for years. Chapter 7 of the NPPF, titled “Requiring good design”, began:

“56. The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.”

68. That has been replaced by Chapter 12 of NPPF2, “Achieving well-designed places”, which begins along similar lines:

“124. The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”

69. It goes on to say, however, that “being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process”. These words mark an additional emphasis given by Government to design policies and guidance and the views of the local community.

70. Although the original NPPF promoted robust and comprehensive design policies, and suggested the use of design codes, it cautioned against an overly controlling approach to design planning, saying that “design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally” (para 59).

71. This is no longer government policy. Instead, one can see in the revised NPPF2 a greater willingness to allow design to be regulated. In para 126 the advice now is that the level of detail and degree of prescription in design guides and codes “should be tailored to the circumstances in each place, and should allow a suitable degree of variety where this would be justified”. Allied to potentially greater prescription of design

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12 See NPPF2, Annex 2: Glossary.
13 [2016] EWCA Civ 404 confirmed that paras 89 and 90 of the original NPPF were “closed lists” of not inappropriate development. The same would appear to be the case in respect of NPPF2, paras 145 and 146.
15 Although in Bromley LBC v Secretary of State for Communities and Local Government [2016] EWCA Civ 595 the High Court clarified that the construction of new buildings which fell with the exceptions in para 89 and which brought with them a material change of use, were capable of constituting appropriate development.
16 Para 19 of Circular 22/80 said “planning authorities should recognise that aesthetics is an extremely subjective matter. They should not therefore impose their taste on developers simply because they believe them to be superior.”
standards at the local level, the Government has drawn a clear link between the success or failure of a planning application on the grounds of design and its compliance with applicable design guidance:

“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development” (para 130).

72. The same paragraph also addresses the concern that however good the design quality of an approved scheme may be, subsequent negotiations between developer and local planning authority may lead to a dilution of the original concept over the course of development:

“Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).”

Concluding remarks

73. In this paper we have looked at some of the main changes to the Framework that are likely to affect housing delivery in the years ahead. The Government is plainly aware of the time and resources devoted to assessing and arguing about housing need, and has decided that a simpler, centrally defined approach is needed. Greater certainty is welcome, but the forthcoming review of the standard method demonstrates that simplicity can bring its own problems. Arguments about housing land supply are likely to persist.

74. Aspects of the presumption in favour of sustainable development have been clarified to an extent, although changes to the wording will inevitably spark further debate and litigation. The housing delivery test could in theory assist housebuilders in areas of poor delivery, but whether it will catch more than a handful of authorities remains to be seen.

75. In other respects NPPF2 is much like its predecessor, with some changes in tone or emphasis, but the substance of national policy left largely untouched. In some ways the reforms will assist housing delivery, or at least reduce the scope for disagreement about the amount of housing needed, but to say that these reforms are ambitious is in our view an overstatement.