

A new planning rulebook or more of the same? – by Martin Edwards

As announced, the Government published the revised National Planning Policy Framework before the summer Parliamentary recess.

The Secretary of State, Rt Hon James Brokenshire MP, described it as a new planning rulebook to deliver more quality, well-designed homes in areas where they are needed. It will also “make it easier for councils to challenge poor quality and unattractive development and give communities a greater voice about how developments should look and feel.” Whether or not that turns out to be the case, time alone will tell.

First appearances can be misleading. Although NPPF2 - as some are already calling it - appears at first blush to be not radically different to the [consultation document](#) published in March 2018, even slight differences in wording can give rise to significant disagreements, as the amount of litigation generated by the original NPPF demonstrates.

For this reason, any textual changes between the original NPPF, the consultation draft and NPPF2 need to be treated with caution. To this end, NPPF2 contains a clear warning that it must be read as whole (including footnotes and annexes). There are also transitional arrangements set out in Annex 1 that must be considered.

What changes?

The broad thrust of the NPPF2 appears to remain, as described in Ashley Bowes's [analysis](#) of the consultation document. However, there are some slight changes that may have considerable impact.

- 1) In relation to the presumption in favour of sustainable development, “strategic plans” has been replaced with “strategic policies” and the definition of a strategic plan has been removed from the Glossary.

When viewed as a whole, NPPF2 appears to be a move back towards two-tier plan making, which may explain this textual change. Footnote 7 now contains more a prescriptive test for when policies are “out of date” in terms of housing although the precise wording (“This include”) suggests that other situations could arise when policies are deemed out of date even though the local planning authority can satisfy the relevant tests.

There is also further clarity regarding the relationship between neighbourhood plans and the presumption in favour of sustainable development.

- 2) Paragraph 46 advises that planning performance agreements “are likely to be needed” for applications that are particularly large or complex to determine. The consultation draft referred to considering “the potential for voluntary planning performance agreements”. This suggests that these agreements may well become the norm rather than the exception.

The advice on planning obligations has also become more mandatory with the replacement of the word “should” with “must”, so that they “must only be sought where they meet” the tests set out in Regulation 122(2) of the CIL Regulations 2010.

Similarly, there is more detailed policy in paragraph 57 regarding the circumstances when a developer is seeking to avoid contributions set out in up-to-date policies and points to it being more difficult for developer’s to avoid paying contributions on the basis of its effect on a development’s viability.

- 3) Paragraph 64 clarifies the potential scope of affordable housing requirements by changing “where major housing development is proposed” in the consultation draft to “where major development involving housing is proposed”.

Paragraph 72 contains far more detailed policies on new settlements and village extensions than appeared in the consultation draft and appears to reflect the lessons learned from some of the [recent unsuccessful attempts](#) to create new garden communities.

NPPF2 should provide all stakeholders with a clearer path forward based on realistic assessments of matters such as planned infrastructure provision, rates of deliverability and lead in times.

- 4) One of the more controversial issues of national planning policy has been with regard to maintaining the supply and delivery of new homes. The original NPPF generated considerable litigation on this one issue alone. Paragraphs 73-76 attempts to provide more certainty but must be read alongside Footnote 7. The Housing Delivery Test referred to in paragraph 75 is amplified by the [Housing Delivery Test Measurement Rule Book](#), which issued alongside the NPPF2.
- 5) There are subtle changes with regard to town centres and retail development, which appears to reflect the recent downturn in the fortunes of many of our established town centres and aimed at allowing greater diversity.

A small but important change is in paragraph 89 where the floorspace threshold of 2,500 m² has been clarified by the inclusion of the words “of gross floorspace”.

- 6) Design policies remain relatively unchanged but paragraph 130 contains a clear instruction to local planning authorities to ensure that the quality of a permitted 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 materials used).” As a result, this could provide a brake on the use of the non-material amendment provisions.
- 7) Paragraph 182 introduces welcome changes to [the “agent of change” policy](#) hinted at earlier in the year. The changed wording suggests greater protection

for existing pubs, clubs and music venues and places the burden of mitigation more squarely on the developer.