

Revised National Planning Policy Framework

Briefing Note 24-01

Service: Planning
Further Enquiries to: Nic Thomas, Director of Planning
Date Circulated: 16 January 2024
E-mail: nic.thomas@wiltshire.gov.uk

Introduction

On 19 December 2023 the government issued a revised National Planning Policy Framework (NPPF), as well as a number of other policy guidance documents. This new NPPF (subject to a further minor revision on 20 December 2023) proposes some key changes that immediately impact upon the council's statutory planning function.

While this note focuses on changes relating to Housing Land Supply, there have been lots of other changes introduced within the new NPPF. Planning Resource has summarised the changes into 30 key points (structured according to whether the changes originally proposed are being taken forward). These 30 changes are attached as an Appendix to this document.

Housing Land Supply

For housing supply and delivery, the revised NPPF contains two important new paragraphs which are relevant to planning decision making in Wiltshire (parts relevant to this note are highlighted in bold text):

77. *In all other circumstances, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years' worth of housing, **or a minimum of four years' worth of housing if the provisions in paragraph 226 apply.** The supply should be demonstrated against either the housing requirement set out in adopted strategic policies, or against the local housing need where the strategic policies are more than five years old. Where there has been significant under delivery of housing over the previous three years, the supply of specific deliverable sites should in addition include a buffer of 20% (moved forward from later in the plan period). National planning guidance provides further information on calculating the housing land supply, including the circumstances in which past shortfalls or over-supply can be addressed.*
226. *From the date of publication of this revision of the Framework, for decision-making purposes only, **certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years' worth of housing** (with a buffer, if applicable, as set out in paragraph 77) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than five years old, instead of a minimum of five years as set out in paragraph 77 of this Framework. This*

policy applies to those authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage, including both a policies map and proposed allocations towards meeting housing need. This provision does not apply to authorities who are not required to demonstrate a housing land supply, as set out in paragraph 76. These arrangements will apply for a period of two years from the publication date of this revision of the Framework.

For the purposes of the revised NPPF, Wiltshire Council is a 'paragraph 77 authority'; and, because Wiltshire Council has an emerging local plan that has reached an advanced stage, it is now 'only' required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of **four years'** worth of housing, rather than five years.

The council's most recent Housing Land Supply Statement (published May 2023) sets out the number of years' supply against our local housing need - 4.60 years. It is likely that this figure is a little higher than 4.6 years because the NPPF has removed the need to apply a 'buffer' to authorities that 'deliver' housing sites. As these figures exceed the four-year threshold, the planning balance is now 'level' rather than 'tilted'. In other words, the changes to the NPPF mean that there is now a lower threshold in place for being able to justify the refusal of planning applications. Pragmatically, this means that fewer 'speculative' residential planning applications are likely to be granted, until such time as the council's housing land supply dips below four years.

Neighbourhood Plans

An additional change to the NPPF is paragraph 14. This relates to situations where planning applications for housing are being determined in areas that have neighbourhood plans in place (less than five years old) and where those neighbourhood plans contain policies and allocations to meet that area's housing requirement. Where this situation applies, the 'tilted' balance will not apply, meaning that speculative housing planning applications are less likely to be recommended for approval where there is conflict with the neighbourhood plan.

Impact on Current (Undetermined) Planning Applications

All undetermined planning applications must have regard to any new 'material planning considerations' before decisions are made. The changes to the NPPF, relating to housing land supply, is a material planning consideration that must be taken into account.

In some situations, this will mean that planning applications that have already been considered by committee, but where decisions have not yet been issued (such as where a S106 agreement is required) will need to be reported back to committee. In that situation, Members will be asked to consider the changes set out in the new NPPF and any implications that this might have to the original decision to grant planning permission.

Decisions about if and when specific planning applications will be reported back to committee will be made on a case-by-case basis.

Impact on Current (Undetermined) Planning Appeals

Some planning applications are subject to live planning appeals. Again, the changes to the NPPF will be a material consideration that an Inspector will need to take into account before a decision is made. The council will be submitting comments to the Planning Inspector on the impact of the new NPPF on each planning application that is subject to an undetermined appeal. The appellant is also likely to be invited to provide comments on their appeal.

Other Matters

While the changes to the NPPF in respect of housing land supply are broadly welcome, there are a number of issues that need to be borne in mind:

- Developers whose planning applications are at appeal are likely to want to challenge the council's four-year housing land supply figure. While the council will robustly defend its position, any successful challenge could impact on the council's published figure.
- The changes to rules relating to the four-year housing land supply are time-limited (maximum of two years). It is therefore very important that the council gains the support of local communities to secure the adoption of its new Local Plan as soon as possible as this will provide a much longer period of 'protection'.
- The council's housing land supply figure can only be retained during the two-year period if suitable planning applications for housing development continue to be granted. If the council refuses too many planning applications, housing supply will drop to below four years and the 'tilted' balance in favour of approval will once again apply.
- While the responsibility for maintaining a housing land supply rests with the council, the evidence that underpins whether sites can be relied upon for delivery rests with developers. The council's powers to encourage developers to bring forward sites are limited.
- The changes introduced by the new NPPF have not been tested through appeals or in the courts. Some of the wording is not as clear as it could be and may therefore be open to interpretation and challenge.

Appendix

Extract from 'Planning Resource' Published Article (21 December 2023) "30 things you need to know about the new NPPF"

Planning Resource' analysis of the 30 things to know about the new NPPF:

Points where the NPPF differs significantly from what was proposed in December 2022

1 In a change to the proposed text, the NPPF makes clear that local authorities are not required to review their green belt boundaries during plan-making, but does not explicitly link this issue to housing supply.

In December last year the government proposed that authorities would not need to review their green belts, even if meeting housing need would be impossible without such a review. However, while the new text in paragraph 145 continues to make clear there is "no requirement for Green Belt boundaries to be reviewed or changed", it does not explicitly state that this trumps meeting housing need. It also adds that councils can still choose to review boundaries "where exceptional circumstances" justify it.

2 In a change to the proposed text, the NPPF drops suggested changes to paragraph 11 which would have meant that the need to avoid development seen as "uncharacteristically dense" for an area would have outweighed the requirement for authorities to meet local housing need.

Instead, the government has inserted new paragraph 130, setting out the objective to protect the character of local areas. This states that significant uplifts in the average density of residential development may be inappropriate if the resulting built form would be "wholly out of character with the existing area". The consultation response makes clear the proposal applies to plan-making only, and any resulting policies should be evidenced by local design codes.

3 In a change to the proposed text, the government has dropped plans to allow councils to be able to take past over-delivery of housing into account when assessing housing need as part of plan-making.

The consultation draft had suggested that in authorities where the number of granted permissions exceeded the provision made in the existing plan, that surplus may have been deducted from what needed to be provided in the new plan. However, the government's consultation response said it had received "little support for accounting for past 'over-delivery'".

4 In a change to the proposed text, the department has ditched proposals to water down the test of soundness required for local plans to be adopted.

The consultation draft had proposed that plans would no longer be required to be 'justified', and instead simply have to meet need 'so far as possible', taking into account other policies in the NPPF. The majority of consultees opposed the suggestion and the government said in its response that "as a result, we have decided not to proceed with the change". However, it said that it was still committed to streamlining evidential requirements for plan-making.

5 In an addition to the proposed text, the new NPPF includes a new clause in paragraph 70 instructing authorities to support small sites to come forward.

The new text says councils should use policies and decisions to support small sites for community-led housing and self-build and custom build housing, and makes a new reference to permissions in principle as a way to enable this.

6 In a change to the proposed text, the NPPF includes a change effectively dropping the previously existing “entry-level exception sites policy” and replacing it, in paragraph 73, with an exception site policy for community-led housing.

The NPPF says authorities should support the development of exception sites for “community-led development” on sites that would not otherwise be suitable as rural exception sites.

7 In a change to the proposed text, the NPPF includes a new definition of ‘community-led development’ in the glossary contained within Annex 2 of the Framework.

The definition states that community-led developments must be instigated and taken forward by a not for-profit organisation set up and run primarily for the purpose of meeting the housing needs of its members.

Points where the NPPF has been taken forward largely or entirely as proposed in 2022

8 Authorities with an up-to-date local plan will no longer need to continually show a deliverable five-year housing land supply.

In this case, ‘up-to-date’ means where the housing requirement as set out in strategic policies is less than five years old, the document says. The proposal takes effect from the date of publication of the revised National Planning Policy Framework.

9 Councils will no longer have to provide five-year housing land supply buffers of 5 per cent or 10 per cent.

Standard additional ‘buffers’ of five and ten per cent - in certain cases – which local authorities have to apply to their five-year housing land supply calculation, have been scrapped. However, in a change to what was consulted upon last year, the 20 per cent buffer which can be applied consequent of failure to hit targets under the Housing Delivery Test, will still apply.

10 Local planning authorities can include historic oversupply in their five-year housing land supply calculations.

The Framework has been amended to include a reference to the “circumstances in which past shortfalls or over-supply can be addressed”. The government’s consultation response said the department will produce additional planning practice guidance in due course to offer further clarification on how this can be done.

11 Some authorities with emerging local plans will benefit from a reduced housing land supply requirement.

For the purposes of decision-making, where emerging local plans have been submitted for examination or where they have been subject to a Regulation 18 or 19 consultation which included both a policies map and proposed allocations towards meeting housing need, those authorities will only have to demonstrate a four-year housing land supply requirement.

12 Protection against development that conflicts with neighbourhood plans has been extended to older such plans.

The NPPF previously said that the adverse impact of allowing development that conflicts with the Neighbourhood Plan is likely to outweigh the benefits, but not if that plan is more than two years old. The government has now extended that protection to plans that are up to five years old. It has also removed tests which had meant local planning authorities needed to demonstrate a minimum housing land supply and have delivered a minimum amount in the Housing Delivery Test in order that Neighbourhood Plans benefited from the protection.

13 The new NPPF confirms that the standard method for calculating housing need is an “advisory starting point” for local authorities in generating housing numbers.

The government’s consultation response makes clear this simply confirms explicitly in national policy the existing status as set out in guidance. The response also confirms the department plans to review the implications for the standard method of new household

projections data based on the 2021 Census, but said these are now not due to be published until 2025.

14 More explicit indications are given of the types of local characteristics which may justify the use of an alternative method of assessing housing need.

The new NPPF says “exceptional circumstances, including relating to the particular demographic characteristics of an area” may justify an alternative approach to assessing housing need other than the standard method. It adds a footnote with an example of “islands with no land bridge that have a significant proportion of elderly residents.”

15 The NPPF retains the uplift of 35 per cent to the assessed housing need for the 20 largest towns and cities in England.

The NPPF has been amended to state that the uplift should be accommodated within those cities and urban centres themselves, except where there are voluntary cross boundary redistribution agreements in place. Neither the NPPF nor the government’s consultation response gives any further detail on the alignment test which is due to replace the Duty to Co-operate between authorities.

16 Authorities will be expected to take particular care to ensure that they meet need for retirement housing, housing-with-care and care homes.

The government added a specific expectation to new paragraph 63 in the NPPF.

17 Authorities will be encouraged to use planning conditions to require clear details of a scheme’s design and materials.

The document now says in new paragraph 140 that relevant planning conditions should refer to “clear and accurate plans and drawings which provide visual clarity about the design of the development”, and which are “clear about the approved use of materials” to make enforcement easier. The new NPPF also includes a number of other smaller changes, as previously proposed, designed to embed the government’s “beauty” agenda.

18 The section promoting mansard roof extensions stays in the final version.

The government has stuck with proposals designed to promote mansard roof extensions, despite criticisms the plans were too locally specific to be put in a national policy document. The NPPF says authorities “should also allow mansard roof extensions on suitable properties” where they harmonise with the original building.

19 The availability of land for food production should be considered when allocating agricultural land for development.

A new footnote to paragraph 181 states that when agricultural land must be used, poorer quality land should be preferred over higher quality land. It states: “The availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development.”

20 The NPPF is amended with a new paragraph 164 to give “significant weight” to the importance of energy efficiency through adaptation of buildings.

The NPPF says that where the proposals would affect conservation areas, listed buildings or other relevant designated heritage assets, local planning authorities should also apply relevant policies.

21 The starting point for creating National Development Management Policies (NDMPs) will be existing national policy on development management.

The government’s consultation response said it had heard concerns from consultees that the creation of an NDMP could prevent authorities including a given topic in their plan. However it said it will remain possible for locally-produced policies to address matters of particular local importance, provided that they are not inconsistent with or repeat NDMP policy.

Points where the government plans to bring forward consultation proposals at a later date

22 In a change to the proposed NPPF text, the new framework does not proceed with reforms which would have meant that evidence of sufficient deliverable permissions would have saved councils from Housing Delivery Test sanctions.

However, the government says it still backs the idea. The original consultation had suggested 'switching off' the application of 'the presumption in favour of sustainable development' as a consequence of under-delivery against the Housing Delivery Test, for those authorities which had delivered more than 115 per cent of required permissions. The consultation response this week said there was no consensus from respondents as to how the policy should work, and the complexity of the policy meant it was not being taken forward at this time. But it added that "the government will continue to consider ways in which this approach could be introduced in a future policy update."

23 Past "irresponsible planning behaviour" by applicants could in future be taken into account when applications are being determined.

The government consulted upon different options of sanctions for developers that persistently breach planning controls or fail to "deliver their legal commitments to the community". However, its consultation response showed consultees were split over the way forward, and it said it will now merely "consider these [responses] carefully in any future policy development" but didn't commit to anything further.

24 Government to push ahead with measures designed to speed up build out of sites, but only after further consultation.

Last year, the government had proposed three interventions, namely: that data will be published on developers of sites over a certain size who fail to build out according to their commitments; that developers will be required to explain how they propose to increase the diversity of housing tenures to maximise a scheme's absorption rate; and that delivery will become a material consideration in planning applications. This week in its consultation response, the government said it wanted to take all three proposals forward, but that they would be subject to "full consultation on them and related issues of build-out".

25 The government will continue to consider the proposal that planning for provision of social rent homes be given higher priority in the NPPF.

The consultation response said consultees views "will be used to inform policy development as we consider this proposal further as part of any future updates to the Framework."

26 Government to explore how small-scale interventions for nature can be promoted in any future updates to the National Planning Policy Framework.

The original consultation had said the government was looking to clamp down on the use of artificial grass by developers in new development and the 'gaming of biodiversity net gain rules'. However the response included no specific policies which are to be worked up.

27 The possibility of embedding a broad form of carbon assessment in planning policy will be explored in a future review of national planning policy.

The original consultation had said the department was interested in whether effective and proportionate ways of deploying a broad carbon assessment existed and, if so, what they should measure. However, this week's response said: "we intend to review national planning policy in due course to make sure it contributes to climate change mitigation as fully as possible."

28 Plans to review policy for climate change adaptation and flood-risk management are also delayed.

The consultation response said the government intended to review national planning policy "in due course" to make sure it contributes to climate change adaptation as fully as possible, and that responses will be used "to inform any future consultation on the National Planning Policy Framework."

Points from the 2022 consultation which have already been answered or responded to

29 Proposed changes to the NPPF text around onshore wind power schemes to enable sites that have not been designated in the local plan to be approved have already been confirmed.

The government in September published changes to the NPPF that responded to the specific proposals contained in the December 2022 consultation designed to unblock the planning system for onshore wind project applications.

30 The intended timeline for changes and transitional arrangements for the move to the new local plan system had already been confirmed this summer.

The department proposed transitional arrangements for the new local plan system set out under the Levelling Up and Regeneration Act in its consultation last year, and has already said how it intends to proceed. In July it said the latest date for plan-makers to submit local plans, minerals and waste plans, and spatial development strategies for examination under the current system will be 30 June 2025, with these plans needing to be adopted by 31 December 2026. This same document also said the department will have in place the regulations, policy and guidance to enable the submission of new plans by autumn 2024.