

## The National Planning Policy Framework comes into force

The new National Planning Policy Framework (NPPF) finally came into force in England on 27 March 2012 following a high profile battle between pro-development stakeholders and environmental campaigners. It replaces over 1000 pages of pre-existing policy with a mere 50 pages. Its new presumption in favour of sustainable development represents a major change in direction for planning policy, potentially opening the door to development previously hindered by out-of-date or slow moving local policy. The NPPF is focused on speeding up the planning system (and thereby helping to kick-start the economy), and making policy more transparent so that communities can more easily get involved in shaping their local areas.

### Presumption in favour of sustainable development

Throughout the NPPF, the emphasis is on the primary importance of economic development and the planning system's role in facilitating such development. The most important change is the introduction of a new presumption in favour of "sustainable development". Significantly, planning applications will still need to be determined in accordance with the development plan unless there are overriding material considerations. However, where the development plan is "*absent, silent or relevant policies are out-of-date*", the NPPF indicates that Local Planning Authorities (LPAs) should grant permission unless the adverse impacts would "**significantly and demonstrably outweigh the benefits**" when assessed against all the policies in the NPPF. The NPPF clearly seeks to set the bar high for "sustainability" considerations to overturn the presumption.

What is sustainable development? The term is described at the beginning of the document as having 3 facets (economic, social and environmental) and reference is made to the traditional Brundtland Commission definition<sup>1</sup>: "*meeting the needs of the present without compromising the ability of future generations to meet their own needs*". However, for the purposes of applying the NPPF, sustainable development has been defined as being the totality of the NPPF substantive policies<sup>2</sup> (but **not including** the Brundtland definition). This may sound odd but appears to be an attempt at avoiding significant planning disputes over what sustainable development actually means. It has never been an easy concept to encapsulate. Similar requirements in the New Zealand planning system for development to achieve "sustainable management of natural and physical resources" were dogged by years of litigation over its practical application. It will also mean that "sustainable development" will have a more "pro-economic development" focus as a result.

### Key issues

- Introduction of a presumption in favour of sustainable development.
- Local Planning Authorities have a 1 year grace period if their plans are relatively up-to-date.
- Uncertainty over how much detail will be brought back in technical guidance and advice.

<sup>1</sup> Set out in the 1987 report of the World Commission on Environment and Development entitled "Our Common Future"

<sup>2</sup> E.g. on economic development, retail, housing, energy, environment protection etc – see further below.

## Transitional arrangements

Although the NPPF came into force immediately on 27 March, some temporary dispensations have been put in place to help LPAs as follows:

- For 1 year, LPAs will be able to follow their own policies where there is limited conflict with the NPPF – so in practice development plans have to be reasonably up-to-date or otherwise the NPPF has to be taken into account immediately. It is easy to see the potential for dispute over what "limited conflict" means.
- For other cases and following the 1 year grace period, the NPPF policies come into full force.

## Substantive policies

Whilst much of the substantive policy content is a familiar distillation of pre-existing policy, the theme of positive promotion of economic development pervades throughout as a core principle. At the development planning stage, LPAs should positively include policies that encourage sustainable development. Further points to note include:

- **Housing:** LPAs have to maintain a rolling 5 year supply of specific deliverable sites for housing (with an additional margin of +5%, or +20% in areas of "persistent under-delivery" of housing). Sites or broad locations then have to be identified for the following two 5 year periods. There is encouragement to consider new settlements or extensions through a "Garden City" approach. Unless strong economic reasons exist, changes of use from Class B1 commercial to residential use should be permitted.
- **Retail:** Development in town centres is still prioritised and the sequential test for retail development outside the town centre remains; an assessment of the impact of proposed schemes on town centres should be required for schemes over 2,500sq m or any locally set threshold.
- **Neighbourhood Planning:** The NPPF contains a policy on neighbourhood planning<sup>3</sup> confirming that Neighbourhood Development Plans and Orders should not promote less development than in the local development plan, nor undermine its strategic policies.
- **Energy:** In line with the National Policy Statements (NPSs) for major energy projects, the NPPF states that LPAs should not require applications for renewable energy and low carbon energy development to demonstrate the overall need for such energy.
- **Infrastructure:** The NPPF notes that the NPSs for the various infrastructure sectors form part of the national policy framework alongside the NPPF (but do not form part of the NPPF). LPAs are required to work together with other authorities and transport providers to provide infrastructure strategies. In particular, LPAs should plan for port and aviation development in the absence of a specific NPS.
- **Planning Obligations and Conditions:** The NPPF now contains the policies relating to planning conditions and obligations and the criteria that they should comply with (e.g. being necessary, reasonable etc).
- **Brownfield Land:** Policies to encourage redevelopment of **brownfield land** have been re-incorporated into the NPPF following criticism of the first draft.

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<sup>3</sup> Neighbourhood Plans and Neighbourhood Development Orders are introduced under the Localism Act 2011.

## Cancelled Policy

Significantly, whilst 44 Planning Policy Statements, Planning and Minerals Policy Guidance Notes and Letters to Chief Planning Officers have been cancelled, all planning circulars (except for Circular 05/2005 on planning obligations) remain in place.

A major unknown is how much of the cancelled detailed policy will be brought back and what status it will have (e.g. whether it will be recreated through technical guidance or circulars). Already, a technical guidance document on minerals planning and flooding has been published which retains key elements of former PPS 25 (on Development and Flood Risk) and other minerals policy documents. The Government is now going through a process of reviewing the need for further guidance.

In addition to familiarising themselves with the NPPF, applicants for planning permission will need to identify carefully those policies that remain in force and how any new guidance is incorporated or re-incorporated in the short term.

## Final Comments

It seems clear that the NPPF is not going to mean *carte blanche* for new development to destroy the countryside. Where LPAs have up-to-date plans that follow the NPPF's sustainable development ethos, they will still be able to shape the direction of development in their area through the development plan. However, it is understood that less than 30% of LPAs have an adopted core strategy for their local development plan. Given that LPAs will have at most 1 year before all the NPPF policies kick in fully (including the presumption in favour of sustainable development), they will need to push local plan preparation forward as quickly as possible. In the meantime, developers will wish to consider whether the NPPF can help to facilitate planning consent for their schemes, especially in the face of opposition from existing local policy (which might now be deemed out-of-date).

The Government has made a worthy attempt at policy simplification through the condensed NPPF. Whether this is successful will ultimately depend on how it is applied and in particular on whether lack of detail causes an unnecessary inconsistency of approach between LPAs. If much of the former detail is re-introduced through other guidance or advice, this simplification may begin to look somewhat superficial.

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