



James Wickham
Partner
Tel. +44 (0) 20 7333 6353
JWickham@geraldev.com



Julia Chowings
Partner
Tel. +44 (0) 121 616 4805
JChowings@geraldev.com



Jeremy Randall
Partner
Tel. +44 (0) 20 7333 6328
JRandall@geraldev.com



Suzanne Thurtle
Associate
Tel. +44 (0) 20 7333 6303
SThurtle@geraldev.com

National Planning Policy Reform - National Planning Policy Framework and Levelling Up



As part of the Government's Levelling Up agenda, a consultation has been launched on proposed immediate changes to the NPPF, primarily relating to housing supply and delivery, as well as proposals on further planning policy reform. This update sets out a summary of the key elements of the consultation and considers the potential implications.

What is the Consultation About?

Our reading is that the [consultation](#) comprises thereof the following information / ambitions:

1. Layer One - 'Immediate' NPPF Changes

Seemingly in response to pressure from Conservative back-benchers, the consultation includes a [track-changed](#) version of the NPPF proposing changes primarily to the calculation of housing need and delivery of said housing, alongside light-touch changes around design and energy. The Government's aim is that these changes would be formally published in spring this year.

2. Layer Two - The Levelling Up and Regeneration Bill

Bedded into the [consultation document](#) are proposals which are already well advanced through their inclusion in the [Levelling Up and Regeneration Bill](#) ('the LURB'). Several echo the ideas set out in the Government's [Planning for the Future White Paper](#) in 2020. The Government states that it expects the LURB to receive Royal Assent in spring this year (subject to Parliamentary approval).

3. Layer Three - Aspiration for Future Planning Policy Reform

Mixed in with the above two layers, there is also a raft of other planning policy reform aspirations, which include a wider review of the NPPF (which would pick up topics not currently addressed in the 'immediate changes') as well as principles for how the new National Development Management Policies ('NDMPs') could be framed and applied.

We set out below a more detailed summary of each Layer identified above.

LAYER ONE – ‘IMMEDIATE’ NPPF CHANGES

The 2012 NPPF had at its heart a pro-growth presumption in favour of sustainable development. The effect of the NPPF changes may be to water this down and reduce the effectiveness of this "golden thread". We set out below changes of particular note:

Housing needs: The changes possibly gathering the most political attention are the ones surrounding the calculation and delivery of housing need. The standard methodology for calculating housing need is proposed to be an **"advisory starting-point"** (para 61) with LPA's able to justify alternative approaches to delivery where exceptional circumstances apply. Added to this is the removal of the five-year buffers (although, importantly, the retention of the buffers for the country's 20 most populated areas), ability to include past 'over-delivery', diminishing the duty-to-co-operate and increased protection for the Green Belt. All of which may weaken the pressure on LPA's to fully identify and meet their housing needs.

Whilst there will still be penalties for LPAs failing to deliver housing by means of implementing the presumption in favour of sustainable development, the bar has been lowered. The proposed changes could well make it even more difficult to achieve the Government's continued ambition of 300,000 homes per year.

Density: The presumption in favour of sustainable development requires that strategic planning policies should provide for objectively assessed needs unless, amongst others, any adverse impacts would outweigh benefits. Previously, no guidance was given as to what 'adverse impacts' could be, but now it is set out that such impacts may include **"situations where meeting need in full would mean building at densities significantly out of character with the existing area"**. This gives greater weight to the maintenance of the status quo. Linked to this is the elevation of design codes through the LURB. Design codes previously sat lower in the pecking order than Local Plans - so LPA's should have due consideration to such codes but Local Plan policies would take precedence.

It is now proposed that design codes would form part of the Development Plan, and therefore, hold the same weight in decision-making as Local Plans. The NPPF seeks to direct housing delivery to the country's 20 most populated cities and urban centres (para 62), in particular via optimising density on brownfield sites (footnote 30) through the use of masterplans and design codes. Design codes should be the **"primary"** tool for LPA's to assess and improve the design of development (para 135).

Local Plans: As noted, the LURB proposes streamlining the Local Plan process. The NPPF changes purposely build on this by removing the need for plans to be 'justified' from the soundness test (para 35) i.e. based on sound evidence. Whilst on the surface this may seem to simplify the process, it could in practice have a counter-effect by effectively removing the goalposts from Local Plan examinations and resulting in potential lengthy debates with no framework for a resolution.

Other changes: Other changes include strong support for mansard roof extensions (para 122), which is a curious piece of detail for a national document, more support for wind farms (footnote 63), the role of neighbourhood plans (para 14), and a reference to developments (particularly large non-domestic buildings) to improve their energy performance through the adaptation of existing buildings (para 161).

LAYER TWO – THE LURB

The LURB was published last May and has had a rocky political road through the House of Commons, but the main principles of the Bill remain broadly as originally drafted, as summarised in our [briefing note](#) at the time. The current consultation document refers to a number of these principles which we summarise below:

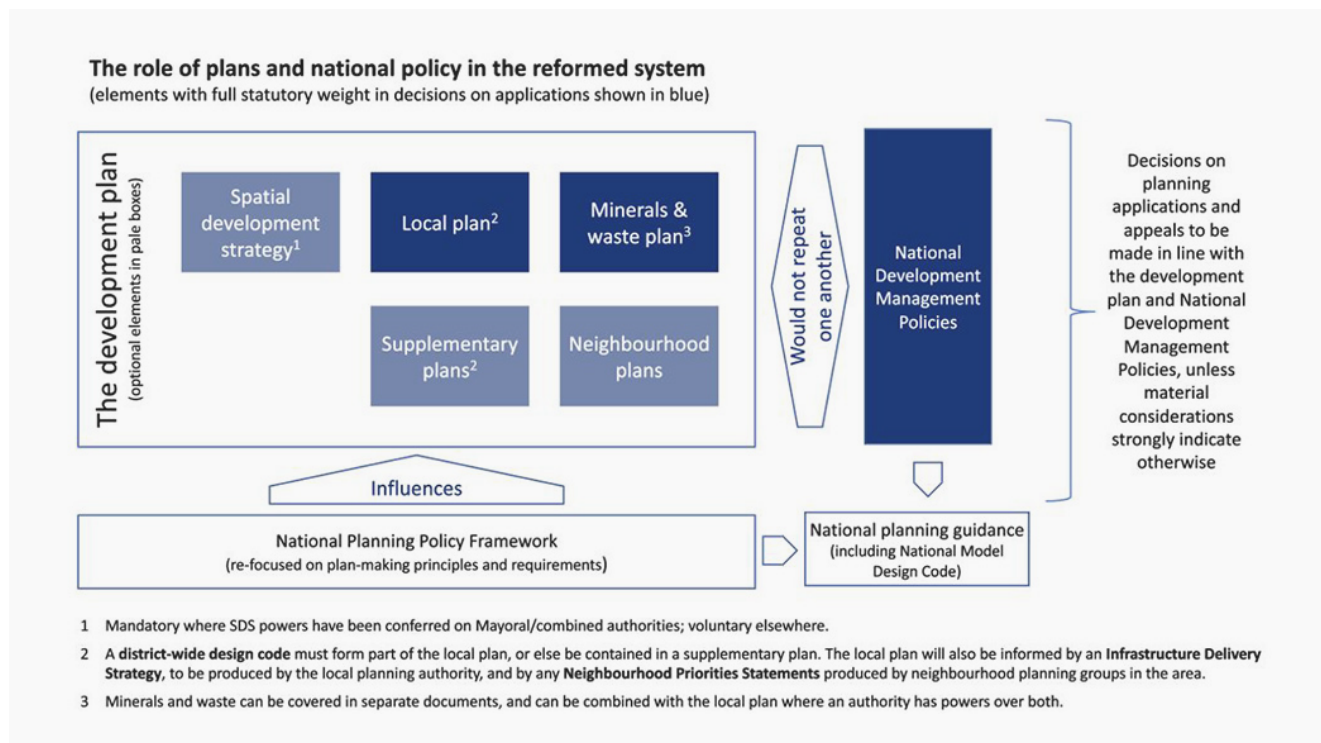
Plan-making: A primary focus of the LURB is that Local Plans (and Neighbourhood Plans and design codes) are the best ways to deliver development (or protect existing areas, depending on one's interpretation). The intention is that LPA's should bring forward Local Plans in a streamlined two-year process, influenced by more community and digital engagement. Transitional arrangements are proposed for plans already in place or under preparation.

The Government anticipates that the reformed system would go 'live' at the earliest in November 2024, with the first new-style plans adopted in April 2027. The consultation states that by the end of 2031 all LPA's must have begun the new plan making process.

Decision-making: Whilst not referenced in the consultation document, it is noteworthy that the LURB still proposes to alter the s38(6) balance, i.e. how planning decisions are made, so that material considerations would need to **"strongly"** indicate otherwise to justify departures from the development plan, as opposed to a more balanced judgement. This would place more onus emphasis on the role of plans, including Neighbourhood Plans and design codes, which would also form part of the development plan.

Infrastructure Levy ('IL'): Scant details are provided in the consultation about the proposed IL but it is clear that this remains a key commitment. Further details are expected in a future consultation on the IL.

Developer enforcement: The LURB includes some provisions for how the Government may penalise 'irresponsible behaviour' from developers to seemingly try and encourage principally housing delivery. This includes allowing LPA's to decline to determine applications on sites where build out rates have been too slow. Additional potential measures have been proposed, which are set out further in this note.



Box 1: Proposed new Development Plan System (Source: Government consultation document)

LAYER THREE – ASPIRATIONS FOR FUTURE PLANNING POLICY REFORM

The wider consultation document sets out a series of Government 'wish list' items which we can expect to see developed through a range of future consultations, including a full review of the NPPF (expected this year):

National Development Management Policies ('NDMPs):

Provision for NDMPs is within the LURB but more detail is given in the consultation document, including setting out that these would be given statutory status i.e. the same weight in decision-making as Local Plans and other development plan documents. This would differ from the NPPF which sits outside of the development plan as a 'material consideration' (see Box 1 above).

The NDMPs are a key part of the argument for how a more streamlined approach to plan-making could be achieved.

The consultation seeks views on the scope and principle of the NDMPs, with full policy details expected to be published for consultation later this year. It is intended that these NDMPs would apply for national priorities only to close 'gaps' where existing national policy is silent. This includes proposing a national policy on carbon measurement / reduction and encouraging the development of housing in built-up areas.

Housing: The wider consultation also sets out further details on changes to the Housing Delivery Test, an intention that LPA's should give greater importance in planning for Social Rent homes and also commits to launching a taskforce on older people's housing. At the moment, no changes are proposed to the Standard Method of housing need calculation, but this is proposed to be reviewed in 2024.

Other changes: The consultation also moots additional penalties for **“irresponsible”** developers in the context of build-out rates, including making delivery a material consideration in planning applications as well as potential financial penalties.

The wider NPPF review is due to include changes to support business investment (including SMEs), supporting productive sectors (with a specific reference to life sciences) and reviewing the approach to supporting employment land.

So What Does This All Mean?

Plan-making: In a perverse way, whilst the ostensible aim appears to be to simplify and speed up delivery of development, we have already seen the changes cause confusion and delay. As a direct result of the consultation many LPA’s (over 30) have announced pauses / delays in their plan-making processes whilst they consider the implications. As a result, they may review the housing targets downwards and, in some instances, reconsider the need to release Green Belt sites for housing.

The impact so far is just from the consultation document. If the proposed changes are brought forward then one could expect many more authorities to similarly look to delay.

The removal of the **“justified”** requirement for plan-making purposes (i.e. providing evidence) also has the potential to create debate and slow-downs. How will LPA’s strategically plan to meet need, and ensure that this need has been properly integrated and has taken into account market signals? There is also a question around how affordable housing and developer contributions will be tested if no evidence is required. These issues are all coming at a time when LPA’s are still facing significant resourcing issues.

Housing, Density and Delivery: The retention of buffers for the country’s 20 most populated areas but removal elsewhere, along with the other proposals to soften housing delivery, will inevitably transfer more pressure on to urban areas to deliver the Government’s housing targets. However, whilst the pressure has been piled on these areas, the NPPF changes seem to actually remove some of the tools which LPA’s could have used to deliver the required development.

There appears to be a jarring of priorities with design codes encouraged to optimise density in populated areas, but **“adverse impacts”** in the NPPF now including building significantly out of character with local areas. How can density be optimised, and wider delivery targets be met, if the NPPF promotes an approach to maintain existing areas as they are?

LONDON PLAN

- 70,000 population increase per annum
- Requirement for c. 520,000 new homes between 2019/20 - 2028/29



BIRMINGHAM ISSUES AND OPTIONS CONSULTATION

- Need for c.7,000 homes per annum
- Shortfall of c.74ha of employment land



Box 2: Illustrative examples of development need in London and Birmingham

The heart of the density vs delivery debate is likely to be seen in the preparation of the design codes which, once established, will make agreeing any development which is not in line much more difficult. Design codes are specifically referred to in the revised NPPF in the context of assessing whether schemes are building at densities **“significantly out of character with the existing area”**.

Whilst the codes may work for some localised, smaller-scale areas, they are likely to be much more of a challenge for complex urban centres. This is partly because of the proposed additional pressure placed on these areas. It is clear that urban areas in particular need to grow and develop in order to accommodate need (see Box 2 as an example). Delivering such need does require a brave approach to density and acknowledging that in some instances, **“existing areas”** may need to change in character - and this doesn’t necessarily have to be a bad thing.

The preparation of the design codes could become complex and protracted. Not only will the codes need to align with other development plan documents (including Neighbourhood Plans), the subjective nature of design could result in lengthy debate, particularly given the relationship between design codes and delivering density. In many city centres, including central London, the local vernacular is incredibly varied and often comprises a mix of competing land uses, interests and design styles. Even in sub-areas there is often very considerably architectural variation. Design codes applying to wide areas potentially remain broad-brush and subjective; developing them for smaller scale sub areas is resource-intensive and often still impractical.

Other Points: The Government's agenda on Net Zero and biodiversity clearly come through in the consultation document as an area of interest. NDMP policies could provide useful clarity and certainty for developers on the targets and ambitions development should be seeking to meet. However, how such a policy will be developed at a national level is unknown given the specific local characteristics which need to be taken into account and differing approaches for different development.

Tackling **"irresponsible behaviour"** and bringing track record of delivery into account adds yet another area of consideration for planning departments and has the potential to add further complexity. Planning permission is, of course, just that - permission to develop, not a requirement to do so. It will be important that any penalties proposed are reasonable and take into account sensible reasons for delivery (such as the Covid-19 pandemic and build cost inflation), as well as other requirements for delivery including the proposed IL. How these requirements are balanced against the need to incentivise growth will need careful judgement.

The changes in respect of affordable housing delivery also have potential significant implications. The greater emphasis on social rent follows the approach a number of London LPA's have taken and could impact upon scheme viability and / or overall affordable housing delivery. Conversely, the proposals include tantalising reference to allowing organisations that are not Registered Providers to provide affordable homes. Permitting direct delivery of affordable housing by developers, landowners and estates could create additional opportunities and build capacity in this area.

So What's Next?

The next milestone will be spring this year, where we expect the revised NPPF to be published and the LURB to receive Royal Assent. From there we can expect to see further planning reform announced and progressed. We would hope that this would include further detail on how non-housing uses, including industrial and logistics uses, can be planned for and developed, as the tone of the consultation at this stage does primarily seem to be centred on housing delivery.

It is clear that the Government's intention is to bring the focus in the planning system on to plan-making, rather than decision-making, the idea being that it is more transparent and fair to communities to have these debates at plan-making stage. It will be crucial for developers to actively engage with local communities and LPA's early in the plan-making process, to try and shape a positive policy context for suitable development. Deviations from the development plan are likely to become much harder to argue so proactive engagement in the process and communicating clear and commercial aspirations for sites to be captured in the emerging development plan will be key.

Disclaimer & Copyright

Gerald Eve's Planning Update is a short summary and is not intended to be definitive advice. No responsibility can be accepted for loss or damage caused by any reliance on it.

© All rights reserved. The reproduction of the whole or part of this publication is strictly prohibited without permission from Gerald Eve LLP.