

Scan for PEP Newsletter
Winter 2024



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NPPF 2023



39 Essex Chambers
#39Events



Overview

- Amendments to the NPPF billed as accompanying changes brought about through the Levelling Up and Regeneration Act 2023
- 22nd December 2022 initial consultation on NPPF amendments published
 - Interim update on 5 September 2023 – onshore wind
 - Later update 19 December 2023 – much more substantive

Housing



Major changes

- Changes re. proof of HLS (what LPAs need to show, and how), removal of the 5% and 10% buffers and important clarification re. plan-making and GB review (difficult not to view this through the housing lens).
- Also relevant: changes to the protection given to neighbourhood plans (likewise).
- Changes generally across Chapter 5 (delivering a sufficient supply of homes), including e.g. regarding community-led development.

But first, a text change re.housing need

- Standard method now explicitly described as an *'advisory starting point'* for establishing a housing requirement and the possibility that exceptional circumstances may justify a different approach clearly flagged (para.61).
- Albeit not a substantive change (this has been policy for some years) words matter. Remember this is “policy off”, before “policy on” produces a housing requirement.
- The “exceptional circumstances” that might justify an alternative approach are also now elaborated (para.61). Exceptional circumstances a broad term (consider Green Belt test).
- An open invitation?

5YHLS relief for plan-led areas

- Para.76 (subject to transitional provisions for existing applications at para.224 and footnote 79 – for existing applications see para.77) LPAs with an adopted plan < 5 yrs old, which identified \geq 5YHLS at end of examination, no longer required to identify & update annually a 5YHLS (contrast old para.75 “recently adopted plan”).
- Para.77 (+ para.226), for the next two years (only) LPAs with an emerging local plan need only show 4YHLS (with a buffer, if applicable).
- Note old para.75(a)&(b) annual position statement option remains (para.78).

Calculation of 4YHLS

- NPPG recently updated. Clarifies that: *Both the (5YHLS & 4YHLS) that authorities should demonstrate for decision making should consist of deliverable housing sites demonstrated against the authority's five year housing land supply requirement, including the appropriate buffer*
- Paragraph: 055 Reference ID: 68-055-20240205 Revision date: 05 February 2024

Still buffering...but rather less

- Significant alterations to the buffers.
- 5% and 10% buffers (required by old para.74(a)-(b)) removed.
- Only the 20% buffer in cases of significant under delivery of housing over the previous three years remains (para.77).
- In practice: a shrinking of the HLS requirement for many LPAs.

Knock-on changes to para.11(d)

- Footnote 8 continues to define para.11(d) ‘policies...most important for determining the application are out-of-date’ & it remains the case that delivery <75% of the requirement over the previous three years triggers the presumption (text now repeated at para.79(c), as well as at footnote 8).
- But footnote 8 reflects the changes to Chapter 5 and para.226.

Compare new vs old footnote 8

September 2023: *This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.*

New wording: *This includes, for applications involving the provision of housing, situations where: (a) the local planning authority cannot demonstrate a five year supply (or a four year supply, if applicable, as set out in paragraph 226) of deliverable housing sites (with ~~the appropriate~~ a buffer, if applicable, as set out in paragraph 74 76) and does not benefit from the provisions of paragraph 76; or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.*

Linked changes re. Green Belt

- Now clear (para.145) that there is no requirement for GB boundaries to be reviewed once plans are being prepared or updated (Gov. says ‘to remove ambiguity’).
- & explicit that proposals for changes to GB only through the plan-making process.
- Compare old para.140 with new para.145: the shift in emphasis is marked.
- Hence, entirely clear LPAs do not need to review their GBs even if they cannot otherwise deliver a 5YHLS (or 4YHLS) through their housing requirement.
- Difficult not to view this through the housing delivery lens, & as a suppressant .

Which way might LPAs jump...



A caveat re. urban density

- Para.130 (new) caveats the policy push for '*significant uplifts in the average density of residential development*' in urban areas.
- It recognises that this '*may be inappropriate if the resulting built form would be wholly out of character with the existing area*'.

Will it encourage plan-making?

Fiscal Year	Strategic Plans Submitted for Examination	Site Allocation Plans Submitted for Examination	Development Management Policies Plans Submitted for Examination	Area Action Plans Submitted for Examination	Minerals / Waste Plans Submitted for Examination	Other Submitted for Examination	Total Submitted for Examination
2010/11	52	8	4	13	12	0	89
2011/12	34	13	2	13	19	1	82
2012/13	36	18	9	16	11	2	92
2013/14	47	19	8	16	4	1	95
2014/15	37	11	5	15	4	6	78
2015/16	11	12	4	5	5	5	42
2016/17	32	12	3	9	7	3	66
2017/18	47	16	2	2	7	1	75
2018/19	40	15	2	3	4	1	65
2019/20	19	5	0	2	8	2	36
2020/21	12	8	1	1	3	0	25
2021/22	23	4	1	1	2	2	33
2022/23 ^P	18	0	1	0	1	3	23

Source, www.gov.uk

Change re. neighbourhood plans

- Increase in protection for NPs (para.14).
- Conflict with a NP likely to 'significantly and demonstrably outweigh the benefits' under para.11(d) if it became part of the dev. plan \leq five years before the decision date (not two years), provided it contains policies and allocations to meet its identified housing req., where identified within that same period of five years or less.
- No req. for LPA to have \geq a three year supply of deliverable housing sites, or that LPA's housing delivery \geq 45% of required over past three years.
- Again, difficult not to view this change through the lens of housing delivery – again as a suppressing measure.

Community led development

- Para.70(b): LPAs to seek opportunities, when plan-making and decision-taking, 'to support small sites to come forward for community led-development for housing and self-build and custom-build housing'.
- Plus para.73 (old 72), and para.82 (old 78), supporting development of exception sites for community-led development on sites otherwise unsuitable as rural exception sites (and not already allocated for housing).
- An opportunity for developers of smaller rural sites, that are unallocated and not rural exception sites. Some market housing possible (see over).

& note

- Footnote 36 to para.73 makes clear that the para.73 exception site policy does not replace the First Homes exception policy set out in the Affordable Homes Update Written Ministerial Statement of 24 May 2021.
- By para.73(a), the community-led development must comprise one or more types of affordable housing (though a proportion of market homes may be allowed at the LPA's discretion).
- The Annex 2 definition of “community-led development” (see p.69, top) is not merely a rebadging of ‘entry-level exception sites, suitable for first time buyers (or those looking to rent their first home’ (and see further Gov. Resp. re. Questions 27 & 28).

Image attributions (JB)

- Housing: New housing development by Russel Wills, CC BY-SA 2.0
- Green Belt: “Save The Green Belt” by Colin Smith, CC BY-SA 2.0
- Planning Inspectorate, quarterly and annual volume statistics, 19 October 2023 release (with Q2 (July-September 2023) data).

Energy efficiency and carbon



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Energy Efficiency and Carbon

- Significant weight to be given to the need to support energy efficiency and low carbon heating improvements to existing buildings. Including heat pumps and solar panels
- NB – para 164 explicitly states that where proposals affect heritage assets then the policies in chapter 16 should apply

Agricultural Land



Agricultural Land Use

- Para 181 'Plans should: ...allocate land with the least environmental or amenity value, where consistent with other policies in this Framework'
- Footnote 62: '...The availability of agricultural land used for food production should be considered...when deciding what sites are most appropriate for development.'

Beauty and Design



Credit : 2005-11-11 00:21 Calips 2488×1624×8 (1419742 bytes) Château de Dampierre-en-Yvelines. Photographie prise par [[User:Calips|GIRAUD Patrick]]

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Beauty and Design

- Chapter 12 now entitled ‘Achieving well-designed **and beautiful** places’
- Amendments to new para 138 (was 133) which give clear support to the use of local design codes in line with the National Model Design Code
- Para 140 (was 135) requires clear and accurate plans to be conditioned
- Mansard roofs (para 124(e))

PPG

- NB *Mead Realisations Ltd v SSLUHC* [2024] EWHC 279 (Admin)
- Recent guidance to support BNG
- Clarification on 4yhls calculations

What's to Come?



Brownfield Land Consultation

- 13 February – 26 March 2024 consultation
- 3 proposals
 - Amendments to national policy to give significant weight to the benefits of delivering as many homes as possible and a flexible approach to internal layout
 - Changes to the HDT in 20 towns and cities subject to the uplift. An additional presumption trigger relating to PDL
 - Reviewing threshold for referral applications to the MoL

Changes to PD Rights Consultation

- 13 February – 9 April 2024
- Proposals to increase the sizes/flexibility of permitted householder extensions permitted and development incidental to the enjoyment of a dwellinghouse
- Proposals to increase flexibility on upward extensions
- Proposals for amending limitations on demolition and rebuild
- Amendments to EV outlet and ASHPs PD rights

Anything else?

- Expect more guidance/policy to support new BNG requirements
- Will *Mead Realisations* encourage the Government to use the PPG rather than NPPF to effect change?