

DLP BRIEFING NOTE 150

Prepared by  
DLP Planning Consultants

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# DLP Planning Consultants

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# DCLG launches new National Planning Practice Guidance (NPPG) online resource

## Introduction

On 6th March 2014 the Department for Communities and Local Government (DCLG) launched the new National Planning Practice Guidance (NPPG) resource.

The NPPG seeks to make planning guidance easier and simpler for practitioners and the public, and is to be read in conjunction with national policy contained within the National Planning Policy Framework (the Framework). The NPPG brings together and updates the previous raft of PPG documents into one online resource.

The Guidance clarifies a number of key planning issues which will be of significance to both applicants and decision makers alike and include:

- (i) **Green Belt**
- (ii) **Retail and Tourism**
- (iii) **Employment**
- (iv) **Appeals**
- (v) **Housing Need and Housing Land Supply**
- (vi) **Renewable Energy**

For a brief summary of these issues please refer to the Summary Note prepared on the new Guidance to accompany this Briefing Note.

## (i) Green Belt

Although there is no specific section on Green Belt, Section 9 of the Framework sets out the purposes of including land within the Green Belt (paragraph 80) as well as the general approach the Government intends to Green Belt and its purposes, eg keeping land 'permanently' open.

The NPPG covers instead a series of issues related to Green Belt under a number of topic questions :-

- **Housing in the Green Belt**

Unmet housing need (including for traveller sites) is unlikely to outweigh the harm to the Green Belt so as to constitute the "very special circumstances" and justifying what may otherwise be 'inappropriate development'. Applications for significant developments in the green belt remain subject to call in by Secretary of State, where he chooses to exercise those powers, where a planning inspector has recommended green belt review and this is not supported by the local planning authority.

Planning minister Nick Boles has recently clarified that the power to adjust green belt boundaries remains with the local planning authority through a Local Plan Review only.

- **Recovery of Appeals by the Secretary of State**

Green Belts are included as two of the circumstances in which the Secretary of State will consider recovery of an appeal in line with a Parliamentary Statement of 30th June 2008 in circumstances of:

- Proposals for significant development in the Green Belt.
- Appeals involving traveller sites in the Green Belt

- **Duty to Co-Operate**

Green Belt is a constraint, along with others (set out in the Framework), that may constitute a robust case to demonstrate that to accommodate unmet needs of neighbouring planning authorities would be inconsistent with the Framework.

The NPPG however, makes clear that although not a duty to agree, the duty to cooperate requires authorities to positively work on strategic planning matters on cross boundary matters and to demonstrate how this has been done.

- **Local Green Space**

If land is already protected by Green Belt policy, or, in London, Metropolitan Open Land designation, consideration must be given as to whether any additional local benefit would be gained by designation as Local Green Space. One potential benefit (in areas where protection from development is the norm - e.g. villages included in the green belt) is where a Local Green Space designation would help to identify features of particular importance to the local community.

The NPPG is clear, however, these designations should not be proposed as a 'back door' way to try to achieve what would amount to a new area of Green Belt..

- **Use of Stop Notices in Enforcement**

The Green Belt, and other specific designations, eg, AONB's are identified as examples in which early Stop Notices may be essential in order to stop operational development causing significant harm.

The NPPG states that a local planning authority must specify in the stop notice when it is to take effect and the effective date must normally be no less than 3 days (or later than 28 days) after the date when the notice is served. (Section 184(3) of the Town and Country Planning Act 1990).

## **(ii) Retail and Tourism**

Whilst the guidance within the NPPG supersedes 'Practice Guidance on Need, Impact and the Sequential Approach (March 2009), the content is broadly in line with that document and sets out the importance of having a **strategic vision for town centres**.

Revised advice on the application of the sequential approach in plan making and decision taking, is set out. In plan making the need for main town centre uses should be assessed and, where need is identified, the suitability, availability or viability of sites considered. In decisions on development the NPPG makes clear that **applicants must demonstrate compliance**, but also that **the test should be proportional and appropriate to the proposal**.

A checklist of considerations is provided which includes the suitability of central sites to development and the scope for flexibility in format and/or scale. Specific market or locational requirements of 'town centre uses' will be accepted, but robust justification is required. **Land ownership is not such a justification**.

The guidance accepts that promoting town centre development is likely to be more expensive and complicated and expects LPA's to be realistic and flexible in determining proposals.

The NPPG reiterates the 2,500 sq m (impact assessment) threshold set by the Framework and builds upon the impact assessment requirements set out at Paragraph 26. The NPPG requires applicants to demonstrate compliance with a 'proportionate and locally appropriate' impact test which should be based on a 'like for like' principle.

The NPPG suggests that local Plan should articulate a vision of tourism which includes identifying preferred locations for facilities. The LPA should consider a set of identified criteria when planning for tourism.

### **(iii) Employment**

The NPPG **requires LPS's to identify the future quantity of land/floorspace required for economic development**, including both the quantitative and qualitative needs of the 'functional economic area'. There is a need to provide a breakdown of this analysis in terms of the quality and location, and provide an indication of gaps in the current land supply.

The NPPG acknowledges that there is no one methodological approach or particular dataset(s) that will provide a definitive assessment, albeit **a standard methodology is presented** which aims to ensure that assessment findings are transparently prepared.

**Policy makers are advised to consider a range of datasets**, including the recent pattern of employment land supply and losses to other uses, market intelligence, market signals, public information, the existing stock of employment land, the locational and premises requirements of particular business types and identification of oversupply and evidence of market failure.

The available stock of land should be compared with the particular requirements of the area so that 'gaps' in local employment land provision can be identified. In doing so policy makers are advised to consider:

- **Sectoral and employment forecasts and projections (labour demand);**
- **Demographical derived assessments of future employment needs (labour supply techniques);**
- **Analysis based on the past take-up rates of employment land and property and/or future property market requirements;**
- **Consultation with relevant organisations, studies of business trends, and monitoring of business, economic and employment statistics.**

The analysis of supply and demand will allow plan makers to identify whether there is a mismatch between quantitative and qualitative supply of and demand for employment sites and translate this into quantified land requirements for the functional economic area.

### **(iv) Appeals**

The NPPG provides a chapter on appeals and provides additional guidance on the different appeal procedures, processes and timeframes.

It requires applicants to give consideration to the merits of the case, and whether there are strong grounds to contest the reasons for refusal of permission, or the conditions attached to a permission, before submitting an appeal. Notably, it proposes that parties who pursue an appeal unreasonably without sound grounds for appeal may have an award of costs made against them.

As well as planning appeals the NPPG provides information on appeals against other planning decisions including:

- **Advertisement consent**
- **Community Infrastructure Levy**
- **Enforcement**
- **Hazardous substances consent**
- **Lawful development certificates**
- **Listed building consent**
- **Listed building enforcement notices**
- **Planning obligations and affordable housing requirements**

- **Prior approval for permitted development, including the neighbours' consultation scheme**
- **Tree Preservation Orders**
- **Non-validation of planning applications**

A brief of the different grounds for appeal and the deadlines and timeframes involved is set out in the NPPG for each type of appeal.

In terms of the non-validation of planning applications, after receiving a non-validation notice and after the relevant time period has passed without the local planning authority granting or refusing to grant planning permission, an applicant may appeal to the Planning Inspectorate against non-determination of the application. Applicants may also appeal if the local planning authority does not make a decision on the application within the timetable and can seek to appeal against non-determination. **Different deadlines apply, depending on the type of planning decision** (set out in Annex 1 of this Briefing Note). However, applicants should first consider engaging with the local planning authority to establish when an application might be decided, before deciding whether to appeal against non-determination.

The procedure to be followed at an appeal will depend on the complexity of the planning matters to be considered. Appellants will be asked to indicate their view of the most appropriate procedure for their case, following the criteria laid down by the Secretary of State. Further guidance is contained at **Annex J of the Planning Inspectorate Procedural Guide**.

The NPPG comments upon 'recovered appeals' with the circumstances required for recovery cases being set out at paragraph 5.

**An appeal decision may only be challenged through the courts on certain statutory grounds. Proceedings to quash an appeal decision relating to the grant of planning permission must be brought within 6 weeks.**

## **(v) Housing Need and Housing Land Supply**

The NPPG clarifies a number of issues in respect of the calculation of the objectively assessed need and supply of housing. These can be summarised as follows:

### **(A) Housing Need**

- The definition of need requires the identification of the scale and mix of housing, and should cater for the housing demand of the area - identifying the scale of housing supply necessary to meet that demand.
- The assessment of development needs should be proportionate and include those future scenarios that could be reasonably expected to occur.
- Plan makers should not apply constraints to the overall assessment of need, such as limitations imposed by the supply of land for new development, historic under-performance, viability, infrastructure or environmental constraints.
- Local planning authorities are required to assess their development needs working with the other local authorities in their relevant housing market area or functional economic market area in line with the duty to cooperate.
- Where Local Plans are at different stages of production, local planning authorities are required to co-ordinate future housing reviews so they take place at the same time.
- The starting point for the Objective Assessment of Housing Need is the Household projections published by the Department for Communities and Local Government. These are trend based and do not predict the impact that future government policies, changing economic circumstances or other factors might have on demographic behaviour. As such the household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends. For example:

- a. Household formation rates may have been suppressed historically by under-supply and worsening affordability of housing - the assessment will therefore need to reflect the consequences of past under delivery of housing.
  - b. Unmet housing need - evidence of the extent to which household formation rates are or have been constrained by supply will need to be taken into account.
- Local needs assessments should be informed by the latest available information and a meaningful change in the housing situation should be considered in the context of the requirement Local Plans to be kept up-to-date.
  - In respect of the most recent 2011-based Interim Household Projections as these only extend to 2021, so plan makers would need to assess likely trends after this date.
  - The Guidance confirms that the household projections produced by the Department for Communities and Local Government are statistically robust and are based on nationally consistent assumptions but suggests that plan makers may consider sensitivity testing, specific to their local circumstances, based on alternative assumptions in relation to the underlying demographic projections and household formation rates. Such testing should take into account the most recent demographic evidence including the latest Office of National Statistics population estimates.
  - Changes from the DCLG projections are required to be clearly explained and justified on the basis of established sources of robust evidence.
  - Issues to be taken into consideration of whether the DCLG projections are appropriate include:
    - Migration levels
    - Demographic structure that may be affected by local circumstances or policies
    - Employment trends - in such circumstances - where the supply of working age population that is economically active (labour force supply) is less than the projected job growth, plan makers will need to consider how the location of new housing or infrastructure development could help to address these problems.
    - Market signals - the housing need number suggested by household projections (the starting point) should be adjusted to reflect appropriate market signals, as well as other market indicators of the balance between the demand for and supply of dwellings. Prices or rents rising faster than the national/local average may well indicate particular market undersupply relative to demand. Relevant signals may include the following:
      - (i) Land Prices
      - (ii) House Prices
      - (iii) Mix adjusted house prices (adjusted to allow for the different types of houses sold in each period) measure inflation in house prices.
      - (iv) Rents - the Office for National Statistics publishes a monthly Private Rental Index.
      - (v) Affordability - the Department for Communities and Local Government publishes quarterly the ratio of lower quartile house price to lower quartile earnings by local authority district.
      - (vi) Rate of Development - if the historic rate of development shows that actual supply falls below planned supply, future supply should be increased to reflect the likelihood of under-delivery of a plan.
      - (vii) Overcrowding - the number of households accepted as homeless and in temporary accommodation is published in the quarterly Statutory Homelessness release.

In respect of market signals plan makers should not attempt to estimate the precise impact of an increase in housing supply but should increase planned supply by an amount that, on reasonable assumptions and consistent with principles of sustainable development, could be expected to improve affordability, and monitor the response of the market over the plan period.

Any cross-boundary migration assumptions, particularly where one area decides to assume a lower internal migration figure than the housing market area figures suggest, will need to be agreed with the other relevant local planning authority under the duty to cooperate. Failure to do so will mean that there would be an increase in unmet housing need.

## **(B) Housing Land Supply**

- The NPPG advises that sites in existing development plans, or with planning permission will generally be considered suitable for development although it may be necessary to assess whether circumstances have changed which would alter their suitability. This will include a re-appraisal of the suitability of previously allocated land and the potential to designate allocated land for different, or a wider range of uses. This should be informed by a range of factors including the suitability of the land for different uses and by market signals, which will be useful in identifying the most appropriate use.
- In addition the NPPG states that the following factors should be considered to assess a site's suitability for development now or in the future:
  - a. physical limitations or problems such as access, infrastructure, ground conditions, flood risk, hazardous risks, pollution or contamination;
  - b. potential impacts including the effect upon landscapes including landscape features, nature and heritage conservation;
  - c. appropriateness and likely market attractiveness for the type of development proposed;
  - d. contribution to regeneration priority areas;
  - e. environmental/amenity impacts experienced by would be occupiers and neighbouring areas.
- The NPPG states that a site is considered available for development, when, on the best information available, there is confidence that there are no legal or ownership problems, such as unresolved multiple ownerships, ransom strips tenancies or operational requirements of landowners. This will often mean that the land is controlled by a developer/landowner who has expressed an intention to develop, or the landowner has expressed an intention to sell. Because persons do not need to have an interest in the land to make planning applications, the existence of a planning permission does not necessarily mean that the site is available. Where potential problems have been identified, then an assessment will need to be made as to how and when they can realistically be overcome. Consideration should also be given to the delivery record of the developers or landowners putting forward sites, and whether the planning background of a site shows a history of unimplemented permissions.
- The NPPG states that a site is considered achievable for development where there is a reasonable prospect that the particular type of development will be developed on the site at a particular point in time. This is essentially a judgement about the economic viability, and the capacity of the developer to complete and let or sell the development over a certain period.
- The NPPG notes that the local planning authority should use the information on suitability, availability, achievability and constraints to assess the timescale within which each site is capable of development. This may include indicative lead-in times and build-out rates for the development of different scales of sites. On the largest sites allowance should be made for several developers to be involved. The advice of developers and local agents will be important in assessing lead-in times and build-out rates by year.
- The NPPG reconfirms that a windfall allowance may be justified in the five-year supply if a local planning authority has compelling evidence as set out in paragraph 48 of the National Planning Policy Framework.

- The NPPG notes that assessing the suitability, availability and achievability (including the economic viability of a site) will provide the information as to whether a site can be considered deliverable, developable or not currently developable for housing. The definition of 'deliverability' and 'developability' in relation to housing supply is set out in footnote 11 and footnote 12 of the National Planning Policy Framework.
- What is the starting point for the five-year housing supply? The NPPG builds on the information within the Framework, asserting that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements. Therefore advocating that local planning authorities should have an identified five-year housing supply at all points during the plan period.
- The NPPG emphasises that considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light. It should be noted that evidence which dates back several years, such as that drawn from revoked regional strategies, may not adequately reflect current needs.
- The NPPG stipulates where evidence in local plans have become outdated, and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered. However, the weight given to these assessments should take account of the fact they have not been tested or moderated against relevant constraints.
- Where there is no robust recent assessment of full housing needs, the household projections published by the Department for Communities and Local Government should be used as the starting point, but the weight given to these should take account of the fact that they have not been tested or moderated against relevant constraints.
- What constitutes a 'deliverable site' in the context of housing policy? Deliverable sites may include those that are allocated for housing in the development plan and sites with planning permission, unless there is clear evidence that schemes will not be implemented within five years.

The Guidance has therefore clarified a number of key issues concerning the considerations upon which objectively assessed needs should be set. Important to highlight is the consideration to be given to the impact of any previous undersupply in housing in suppressing household formation rates; the importance of the balance of changes to the labour force and the economic projections/aspirations of the plan; and the impact that the Guidance could have upon a council's duty to co-operate.

## **(vi) Renewable Energy**

The NPPG identifies matters that local planning authorities should consider in plan-making/ decision taking, including:

- the range of **technologies and the policies needed to encourage their development in the right places;**
- **falling costs of technologies impacting their attractiveness and number of proposals;**
- **different impacts that different technologies may have place to place;**
- **UK legal commitments vs local authority objectives.**

Examples of considerations for particular renewable energy technologies, **that may affect their siting** are given, including transport links, water sources, predicted wind resources, electromagnetic interference and access for large vehicles.

Local authorities are advised that, when identifying suitable areas for renewable and low carbon energy, they should take into account:

- **The requirements of the technology; and**
- **The potential impacts on the environment, including from cumulative impacts;**
- **The views of the local community likely to be affected should be listened to.**

Advice is also given in respect of the suitability of applying buffer zones or separation distances.

The Guidance gives particular advice in respect of large-scale solar farms. Local planning authorities should particularly consider the following when assessing the visual impact of a proposal:

- **Encouraging the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land, provided it is not of high environmental value;**
- **Where a proposal involves green field land, poorer agricultural quality land should be used or the proposal should allow for continued agricultural use where applicable;**
- **That solar farms are normally temporary structures;**
- **The proposal's visual impact, the effect on landscape of glint and glare, and on neighbouring uses and aircraft safety;**
- **Additional impacts should solar arrays follow the daily movement of the sun;**
- **The need for, and impact of, security measures such as lights and fencing;**
- **Impact upon heritage assets;**
- **The potential to mitigate landscape and visual impacts;**
- **The energy-generating potential, which can vary greatly.**

**For a brief summary of these issues please refer to the Summary Note which has also been prepared on the new Guidance to accompany this Briefing Note.**

**DLP Planning Consultants will continue to monitor any changes to the online resource and are able to advise upon the significance of the new Planning Practice Guidance. Should you have any queries in respect of your land interests or wish to discuss these matters further, please do not hesitate to contact any of our regional offices and a member of our experienced team will be happy to advise.**

## Annex 1

### Performance Targets for the determination of appeals by the Planning Inspectorate

<b>Procedure</b>	<b>Time to determine</b>
Householder Appeals Service	80% within 8 weeks
Commercial Appeals Service	80% within 8 weeks
Written Representations	80% within 14 weeks
Hearings	80% within 14 weeks
Inquiries (non-bespoke)	80% within 22 weeks

**If you require more information or would like to discuss the issues mentioned in further detail please contact:**

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A summary of matters that the DLP Consulting Group provide services for follows:

### Strategic Planning Research Unit (DLP)

Objective Assessment of Housing Needs  
Five Year Land Supply Assessment  
Economic Impact of Housing  
Economic Impact of Development Proposals  
Retail Impact Analysis  
Expert Witness on Housing Needs  
Local Plan Examinations

### DLP Planning Consultants

Planning Applications and Appeals  
Public Consultation  
Development Promotion  
Development Plan Representations  
Land Searches  
Project Management  
Minerals and Waste Planning  
Conservation Area / Listed Building Negotiation  
Enforcement  
Retail Impact Analysis  
Renewable Energy Planning and Delivery  
Discharge of Planning Conditions

If you would like to receive a brochure providing more detail of the service provided by the DLP Consulting Group, please contact any of the offices listed on the left of this page.



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