

# Reforms to National Planning Policy - Consultation on the Prospectus of Proposed Changes to the NPPF

## Briefing Note

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### Introduction

On 22 December 2022, the Department for Levelling Up, Housing and Communities (DLUHC) published the eagerly anticipated consultation on the proposed updates of the National Planning Policy Framework (NPPF) ('the Prospectus' or 'Proposed Changes'). This followed Michael Gove's letter to local authorities and his 5th December Written Ministerial Statement regarding the progress of planning reform and the Levelling Up and Regeneration Bill (LURB) (see our previous Briefing) and various speeches.

The wider scope of the consultation is framed within the context and policy objectives of the LURB, and it seeks views on its proposed programme for planning reform, which as DLUHC states 'will place local communities at the heart of the planning system'. The consultation extends to the 2nd March 2023.

DLP have reviewed some of the key elements and their potential effect and consequences for development. However, it should be born in mind that the review was spurred by political events and the Prospectus is a consultation draft, and the exact nature of changes proposed to take effect in a revised NPPF, in Spring 2023, may differ.

The proposed changes within the Prospectus focus principally upon housing delivery, and introduce potential changes to national policy in relation to housing needs, including housing for specialist groups such as older people.

The main proposals seek to introduce (some) greater 'flexibility' in the assessment of need and the levels of provision to be identified in Local Plans, and to reduce 'burdens' upon local authorities in terms of the management of supply.

### Wider Context for the Consultation

The consultation acknowledges the proposed wider review of the NPPF (and amendment of its scope through the introduction of National Development Management Policies,) together with some significant changes to plan-making, (subject to future Regulations). Potential further changes will necessarily be dependent upon the passage of the legislation and any amendments that may be made, and this provides the prospect of further 'engagement' later in 2023.

The Consultation Report outlines the timetable for wider reforms to plan-making and anticipates that the adoption of 'old style' (i.e., current) Local Plans is expected to continue, and the last Plans to be adopted may not need to begin a review until 31 December 2031. The effect of the Prospectus is therefore potentially wide-reaching.

The Government considers that changes to national policy are required to support and incentivise the preparation of Local Plans in advance of wider reforms. This is justified via internal analysis of the government's impact assessment of proposed planning reforms (via the LURB), which suggest that the adoption of 'sound' local plans increases housing delivery by around 14%.

In DLP's view the simplicity of this should be subject to scrutiny during the consultation, however, the political background to the review is likely to mean that this becomes a key factor in pushing forward the proposed reform.

The content of the Prospectus offers few provisions to support implementation of the Government's wider proposed reforms, e.g. design. These include reference to 'beauty' as part of good design and placemaking objectives, and some express support for roof design (Mansard roofs), some (qualified) support for onshore wind, and further potential protections of agricultural land, where valued for food production.

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## Addressing Housing Needs

The Government is not, at this point, proposing any changes to the standard method formula. Instead, it reiterates that the 2014-based household projections (which underpin the Standard Method) provide stability, consistency and certainty to LPA's. This, therefore, appears to underline that making provision for local housing need (including provision for the urban uplift, where applicable) would accord with the Government's re-stated aim of supporting provision for the delivery of 300,000 homes per annum, which the Government has reiterated is its aim.

DLUHC have committed to reviewing the implications for the Standard Method of new household projections data, based on the 2021 Census, which is due to be published in 2024 (see Briefing Note 378). In the meantime, however, the Prospectus confirms continued use of LHN to inform housing targets and that the standard method is only advisory and not mandatory.

The Standard Method, therefore, appears now to be only a measure for how 300,000 homes/pa might be delivered annually. In effect this means that local authorities not making provision (for LHN) arguably increases requirements on authorities elsewhere, and this has implications for cross boundary cooperation (see below).

The tensions in the position(s) taken are readily apparent, particularly with the Prospectus placing an onus on the introduction of 'new flexibilities to meeting housing needs'. This arguably sits alongside a change in emphasis from significantly boosting supply through plan-making and managing housing delivery, to making 'sufficient provision and meeting as much need 'as possible'.

The Consultation is explicit that the "purpose of these changes is to provide more certainty that authorities can propose a plan with a housing requirement that is below their local housing need figure".

These 'flexibilities' can be broadly summarised as follows

Firstly, in relation to the assessment of housing need and provision - alternative approaches - The Prospectus proposes to retain and emphasise the opportunity for authorities to consider an alternative approach where exceptional circumstances can be demonstrated. As part of

the Consultation, views are sought on how to specifically indicate the range of geographic and/or demographic factors which could provide exceptional circumstances.

The reference to 'geographic indicators' informing alternative approaches could, unless strictly defined, introduce consideration of a wide range of land use constraints as part of the assessment of need, prior to determining how much provision could be accommodated as part of the assessment of supply.

The proposed changes to paragraph 142 of the NPPF also highlight that provision over the standard method maybe justified by reference to economic growth ambitions. DLP have extensive experience of making such arguments justifying increased housing requirements to meet the needs of economic growth. This type of demographic modelling is likely to gain greater prominence in the preparation and examination of Local Plans as a result of the proposed changes.

## 'Over-delivery'

Over delivery may be defined as deducting provision to account for both the grant of permissions and delivery of more homes than planned for during the preceding plan period. This in essence removes the argument that where in policy provision is made this should be treated as a base line, a minimum, in order to boost supply. As such, our view is that this will disincentivise growth such that:

- Many existing adopted Plans specifically treat the allocation figure as a minimum or specifically provide fewer homes than would be required by the Standard Method, and furthermore do not include measures for over-delivery;
- Adjustments to the Standard Method already address, although not explicitly stated, past-delivery trends by reference to the affordability ratio;
- The Prospectus does not reconcile with existing guidance, where alternative need assessments can generate a need in excess of LHN and may take account of higher past growth and the latest demographic indicators. DLP's experience is that these indicators may can support for higher levels delivery in addition to support for job creation and infrastructure delivery which the Prospectus does propose to refer to specifically at Para 67.

- The problem with this approach as highlighted by DLP at various appeals is that a mathematical oversupply against a plan requirement that is lower than the standard method is not actually an oversupply of housing it is just meeting the full housing needs of the area.

### Delivering the urban uplift

It is clear that the government still considers that there are untapped opportunities in respect of brownfield land and “densification” in the 20 largest urban areas. As a result the Duty to cooperate is proposed to be removed and unless there is a joint spatial plan or spatial development strategy this uplift is not required to be met.

This approach in connection with the other justifications for not meeting need (set out below i.e. green belt and local character) renders the Urban Uplift completely ineffectual.

### Constraints to meeting need

In relation to explicit constraints to supply reflecting an inability to meet needs in full, again a series of ‘measures’ are raised:

1. **Protecting Local Character** - proposed changes within the Prospectus would firm up control in respect of building at density, with densities considered to be out-of-character with the existing area, potentially resulting in adverse effects, outweighing the benefits of meeting housing need in full.

The Government proposes at this stage, notwithstanding the opposition to it, to continue with the urban uplift and mandate that it be met to the greatest extent possible in towns and cities rather than see this exported to neighbouring areas, unless there is a voluntary cross-boundary agreement to do so (for example through a joint local plan or spatial development strategy).

Pending formal removal of the Duty to Cooperate, protection of local character as an argument will likely increase the extent of unmet needs in both urban and rural areas, and as such increases uncertainty as to how local needs may be met, and where.

2. **Protecting the Green Belt** - the Prospectus makes it very clear that LPA’s will not be required to review and alter Green Belt boundaries if this would be the only way in which they could meet their needs in full. Where LPA’s wish to review their Green Belt boundaries, however, they are not prevented from doing so, and this will essentially become a political decision as has been shown to be the case most recently.

These provisions will likely restrict many areas in meeting their housing needs when objectively assessed. Further, Paragraph 142 appears to offer a yet different and somewhat contradictory approach, requiring consideration be given to both the ability of Green Belt boundaries to endure beyond a plan period, as is currently the case, (other than when development needs require review), and also to promote sustainable patterns of development.

Furthermore, in circumstances where a LPA does not consider it appropriate to undertake a ‘wider assessment’ of Green Belt boundaries, it can, however, undertake a review to consider meeting specific housing needs, such as older persons’ housing. In such circumstances the objectivity of selecting appropriate locations for development, while rejecting others, would appear to be a matter for ‘local choice’.

### Older Person’s Housing Need

One positive emerging from the review, is the Government’s exploration of how the Framework may enhance the provision of housing for older people, as part of its initial proposed changes to national policy. This is a move towards reflecting the weight given to meeting this need in the Planning Practice Guidance, but the proposed changes could have gone further to consider more specific questions.

It proposes to accomplish this by introducing a new, specific requirement that ‘special consideration’ (unspecified what this means) be given to care homes, housing-with-care, and retirement communities (extra care).

In addition, DLUHC reaffirmed the now longstanding intention to establish a taskforce to consider housing for older people, which will investigate ways to expand older people’s access to a variety of housing alternatives.



DLP have already produced nationally based research on how to assess future older persons housing needs at a local level which will be increasingly useful for LPA's and promoters in the context of planning for this need.



[https://www.dlpconsultants.co.uk/wp-content/uploads/2022/04/DLP-SPRU\\_Older\\_Person\\_Housing\\_Need\\_Research.pdf](https://www.dlpconsultants.co.uk/wp-content/uploads/2022/04/DLP-SPRU_Older_Person_Housing_Need_Research.pdf)

## Managing Housing Supply

In-line with the recent WMS, DLUHC are proposing to remove the requirement for LPA's with an up-to-date Local Plan, to demonstrate a rolling 5-year housing land supply.

The Government also proposes to introduce, via transitional arrangements, time-limited provisions to reduce the 'burden of assessing deliverable supply'. The guidance proposes a reduction in the supply requirement to a 4-year supply for authorities continuing to progress Plans, taking account of the Prospectus (if implemented) after Spring 2023.

In a similar vein to the approach being taken to oversupply, the Government are also consulting on how historic oversupply can be considered as part of five-year housing land supply calculation where there is no up-to-date Plan. As highlighted earlier DLP have consistently argued at appeals and Examinations that a "mathematical" oversupply against a housing policy requirement that is lower than the actual projected need is not an oversupply in real terms and should not be discounted from future needs.

In order to further 'simplify' the assessment process, it is proposed to remove the requirement for a 'buffer' to be included within the assessed supply of deliverable sites, and this includes the 20% buffer as a consequence of a failure to meet the Housing Delivery Test (HDT) in the case of a significant under-delivery in the last three years.

The proposed changes do not provide details of how deliverability will be assessed more rigorously at Examination, which in DLP's experience is a pre-existing issue preventing the adoption of plans that maintain robust assessments of supply.

When slow housing delivery is considered to be driven by developer behaviour (discussed further below), the

Government also intends to implement the HDT in a way that does not unfairly penalise local planning authorities. In light of this, it recommends adding a second permissions-based test to the present Housing Delivery Test.

When LPA's can show "sufficient" deliverable permissions to satisfy the housing demand stated in a local plan, "the presumption" will not be applied as a result of under-delivery

Under DLUHC's evaluation, allowance is made for a contingency figure to be incorporated. It proposes that this should be set at 15%, based on a review of the number of planning permissions that are not advanced or are changed. It suggests that "adequate" deliverable units be defined as constituting 115% of the local housing need or housing requirement, which will serve as the foundation for the "switch off."

The Consultation does not expressly reconcile this requirement with the proposed removal of 'buffers' from the assessment of deliverable supply. Where the HDT is not 'passed' it remains that LPA's put together an Action Plan, in line with previous requirements.

## Plan-Making

The Prospectus proposes a simplification of the tests of 'soundness' such that they are no longer required to be 'justified'. This is presented as complementary to the intended flexibility in addressing housing needs.

In tandem with this, It is proposed that plan examinations assess whether a proposed housing target meets local need, so far as possible, takes account of other policies of the Framework, and will be effective and deliverable".

The approach now advocated raises a series of questions, there being an absence of clear guidance on what degree of supporting evidence is required to demonstrate that a Plan is deliverable, and that all reasonable options have been assessed. Arguably, without requiring plans to be justified, there is a considerable risk that 'ineffectual plans, which are short term and fail to meet the objective needs of local communities, could be adopted. The consequence of this, will be the 'postponement' of development meaning that a range of needs are simply not met.



With the LURB set to revoke the ‘Duty to Cooperate’, DLUHC is considering implementing an “alignment policy” as part of a future, revised Framework to ensure co-operation across authorities where strategic planning considerations are established to transcend administrative boundaries. Noting the ‘flexibility’ to be introduced via the Prospectus, the Consultation Report provides little indication that any future arrangements would provide strategic plan-making ‘safeguards’ to ensure needs are met in full.

A principal objective of the planning reforms is the further encouragement of the inclusion of local residents in the plan making and decision taking processes, and this leads to additional protections for Neighbourhood Plans.

First, DLUHC are proposing to extend protection to neighbourhood plans for up to 5 years instead of the current 2 years.

Second, it is proposed that tests which currently require LPA’s demonstrate both a minimum housing land supply, and minimum delivery in the Housing Delivery Test for Neighbourhood Plans to benefit from the protection afforded by the Framework are removed.

### Developer Accountability

The Government is seeking changes to national policy to increase the responsibilities on developers for the delivery of housing. This is intended to address adverse perceptions of *“previous irresponsible behaviour in decision-making”*, such as may be related to non-compliance or unimplemented permissions.

The consultation proposals provide little demonstrable evidence of widespread unreasonable behaviour from the majority of developers .

In particular, the Government wants to know if previous (as of yet undefined) negligent planning behaviour should be taken into consideration when granting planning permission. The government claims that by doing this, *“bad developers would no longer be able to manipulate the planning system, strengthening local people’ confidence in it.”*

At least two options are being considered for how to account for previous reckless behaviour:

- **Option 1:** making such behaviour a material consideration when local planning authorities determine planning applications.
- **Option 2:** allowing local planning authorities to decline to determine applications submitted by applicants who have a demonstrated track record of past irresponsible behaviour prior to the application being considered on its planning merits.

To ensure that the suggestions are “fair, proportionate, and feasible,” the Government proposes to further consult with stakeholders.

The following three actions will be implemented in relation to build out rates via potential further modifications to national planning policy following the passage of the Bill itself:

- Data on developers not fulfilling their promises will be published.
- Developers will be required to publish data on rates of build and sale.
- Developments that would have an unacceptably slow delivery rate might be rejected.

According to the Government, these measures will increase transparency and public accountability when reviewing build out rates after permission is granted, give local government more power to take build out factors into account when making planning decisions, and equip authorities with more powerful tools to address build out issues as they arise. How these will be measured is not explained

The Government also proposes to start a second consultation on ideas for imposing a fee on developers who are delivering too slowly.

## Final Thoughts

Our initial summary, and the wider impression of many within the sector, is that the proposed changes to the NPPF could have far reaching implications for the delivery of housing across the country. Additional barriers to development, badged as handing back control to local residents, will likely impact on housing supply in the short-term. However, within a climate of continued political uncertainty and Government's somewhat inconsistent on its objectives for planning reform as a response to the housing crisis the ongoing consultation is a critical opportunity to seek to influence the exact nature and future effect of the proposed changes before they are ultimately confirmed.

If you wish to find out more about the Prospectus NPPF or how DLP can assist with any other planning queries, please get in touch:

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