

The National Planning Policy Framework (NPPF)



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Introduction

The National Planning Policy Framework (NPPF) was published on 27 March 2012 by the Department for Communities and Local Government. It sets out the Government's planning policies for England and how these should be applied.

What is it, and does it help or hinder development?

What is it?

Prior to the evolution of the NPPF, planning guidance was set out within Planning Policy Guidance and Planning Policy Statements. These together contained over 1000 pages of text. The aim and purpose of the NPPF was to drastically reduce the amount of planning guidance and policy to a single 57 page document, with the intention of making the planning system simpler and easier to navigate and, as a result, pro-growth.

The NPPF makes no change to the statutory basis underpinning the way in which planning decisions must be made. This point is often misunderstood. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the determination of a planning application

"must be made in accordance with the development plan unless material considerations indicate otherwise"

and that remains the case.

The local planning policies of a local planning authority (LPA) (which form part of its development plan) must conform to the NPPF. So the NPPF is, in effect, top trumps (as it were). Given the NPPF has extended the policy position beyond that which existed previously, by introducing its key

"presumption in favour of sustainable development"

the importance of the NPPF can hopefully be seen. This presumption is regularly referred to as the golden thread running through both plan-making and decision-taking. Although the concept of sustainable development has not been expressly defined in the NPPF, it provides a simple test to assist. That is that planning permission should be granted unless the adverse impacts of granting the permission would significantly and demonstrably outweigh the benefits.

The NPPF may not be part of the development plan, but (as we shall see) it is a muscular "material consideration" (in Section 38(6) terms). It sets out strategic priorities that must be considered and included in local plans, so to encourage the sustainable development that it hopes ultimately to achieve.

Returning to the NPPF conformity point, due weight must be given to relevant policies in existing local plans according to their degree of consistency with the NPPF. Put another way, the closer the policies in a local plan are to the policies in the NPPF, the greater the weight that may be given to them. However, if a local plan is

"absent, silent or relevant policies are out of date"

planning applications must be determined in accordance with the presumption and be granted, unless the negatives of doing so override the positives.

Clarity or confusion?

Put that way, the NPPF's message and intent seems clear. However (as any civil servant who has introduced a policy document promising extreme clarity and a streamlined approach knows, and despite the NPPF's laudable effort to present national planning policy succinctly) the NPPF is criticised for bringing with it gaps in understanding that need to be filled.

The intent and sense of the planning guidance provided by Government has not changed (so far so good), but much of the detailed interpretation built up over decades has been cut away. This has led to confusion about the interpretation of the NPPF. The NPPF contains very little interpretation of the guidance which must form the bedrock of any planning application determination and the foundation of any strategic planning policy formulation.

The role and use of policy, and its analysis, underpins the planning appeal system and judicial review of planning decisions. The NPPF's reduction in interpretative guidance causes considerable potential for there to be more, as opposed to less, delay in decision making (and, as noted below, this is starting to be seen).

Faced with this issue, one must feel for LPA planning officers, placed in an unenviable position as they seek to interpret the NPPF. They strive to apply it correctly when considering planning applications, based on the assembly of necessary evidence. However, the lack of interpretative guidance is seen by many



as leading unavoidably to inconsistencies in planning decisions, paving the way to planning by appeal.

The NPPF in action

Given all this context, the NPPF has unsurprisingly been considered in a number of planning cases. We have space to look briefly at a couple here. They start to tell the story of how the NPPF's journey through the courts is beginning to clear up some of its ambiguity.

Tewkesbury BC v SSCLG, Comparo and Welbeck Strategic Land [2013] shows very clearly the importance of the NPPF mantra of sustainable development. The developer sought to overturn a decision to refuse an application for the development of 1000 new homes on open farmland. The court granted judgment in favour of the developer. It held that as the planning decision was based on the LPA's out of date existing local plan, it carried little weight and the principles of the NPPF were to prevail. Paragraph 49 of the NPPF (policies for the supply of housing will be regarded as out of date if there is not a five-year supply of deliverable housing sites) was critical to this grant of permission. The demonstration of low housing supply, alongside a local plan which was still emerging, meant that the NPPF prevailed.

In the Court of Appeal case of City and District Council of St Albans v R (Hunston Properties Limited) and another [2013], the developer had applied for planning permission for the development of 116 dwellings on green belt land. Again it was in the end the NPPF's provisions regarding a LPA's housing needs which won the day. Permission had been refused, based on an out of date and revoked regional plan which was used to calculate the housing needs of the area. The developer argued successfully that the NPPF guidance had been interpreted incorrectly (confusing its guidance on "plan-making" with that on "decision-taking") and the wrong conclusion reached as a result as the true housing needs of the area were calculated wrongly. Again we see the Court finding in favour of the developer (and, in effect, the NPPF).

Where now?

These cases have shaken up the planning regime and many LPAs are now seeking to put in place an up-to-date plan (and, particularly where housing is an issue) an objective assessment of housing requirements. The case law illustrates how local plans need to be constantly updated. That is an onerous task for cash-strapped LPAs, but the NPPF will (if the NPPF cases seen so far are anything to go by) otherwise always come out on top.

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