

The NPPF and Housing

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The Big Question

1. The question on everyone's lips is whether the NPPF will make it easier for developers and house builders to get planning permission to build the new houses in a context where there continues to be economic difficulty in the UK and Europe and housing starts/completions remain sluggish.

The House building context

2. It was only in March 2011 that the HBF reported that house building in Britain fell to lowest peacetime level since 1923¹ House building starts and completions rates have picked up and the seasonally adjusted house building starts in England stood at 25,240 in the December quarter 2011. This is 6% higher than in the September quarter 2011 and 74% above the trough in the March quarter 2009. However, starts were still 48% per cent *below* the December quarter 2005 peak. Completions were also up 2% from the September 2011 quarter. But both annual housing starts and completions in the 12 months to December 2011 were *down* compared with the 12 months to December 2010².
3. In its New Housing Pipeline Q4 2011 report, the HBF said:-

“Glenigan recorded the approval of 32,900 residential units during the third quarter of 2011; a 13% increase on the previous three months, but still 10% down on a year ago. Not only is this well below the quarterly average of 64,500 during 2006 and 2007, it also falls short of 2010's quarterly average of 38,500 units. Overall the number of units approved during the first nine months of this year is 17% down on the corresponding period of 2010.

The approval of social housing projects (schemes consisting of predominately social housing) has been on an erratic, downward trend since the General Election. This continued during the closing months of

¹ See HBF Budget Submission 2011 – March 2011.

² See DCLG's House Building: December Quarter 2011, England – 16 February 2012.

2011. At 5,100 the number of unit approvals covered by social housing projects during the fourth quarter was 36% up on an especially weak third quarter, but remained 6% down on a year ago. Taking 2011 as a whole, at 19,000 units social housing approvals were 46% down on the preceding year.

The flow of private residential approvals remains weak. At 26,000 units, private residential approvals during the fourth quarter were 6% down on the preceding three months and 2% lower than a year ago. Overall private residential approvals totalled 109,000 units during 2011, a 7% drop on the previous year but still 4% up on their 2009 low point. Nevertheless the number of residential units approved remains at around half the annual rate of 215,000 to 223,000 units seen during 2006 and 2007.”

4. Against this background, and an uncertain future, what impact will the NPPF have on housing if any?

Reaction to NPPF

5. When the draft NPPF was published it provoked mixed reactions. It was welcomed by developers and house builders but in other quarter provoked hysteria that the promotion of economic growth and a presumption in favour of sustainable development would mean that the countryside would be built over³ & 4. The Government was lobbied hard from all sides and on 27 March produced the final document and in doing so consigned some 44 national policy documents, including PPS2, 3 and 7 to the furnaces of an energy from waste plant. But who won the debate?
6. CPRE’s immediate reaction to the NPPF was that:-

“We were very reassured that Greg Clark recognised the intrinsic value of the ordinary countryside 'whether specifically designated or not' and stated that the five principles of the UK Sustainable Development Strategy are included in the document. These were critical issues for CPRE. We are pleased the Minister appears to have listened to the strong public views, which mirrored our concerns”.

³ The National Trust said in the Forward to its formal consultation that: *“In continually and repeatedly emphasising the primacy of economic growth in the document and creating the presumption in favour of sustainable development we believe it constructs a fundamentally unbalanced system driven by short-term goals. At best, this will create confusion and misinterpretation; at worst, it will undo much that was achieved by our planning system since 1947”.*

⁴ CPRE said in the Executive Summary to its formal consultation response: *“CPRE has strong concerns that the draft NPPF would be both unworkable and damaging as a statement of national planning policy. The draft policies threaten both the long term health of our countryside and sustained investment in urban areas, and seek to promote economic growth seemingly at any cost, rather than development that is truly sustainable”.*

7. On 29 March 2012, the Director General of the National Trust said that:-

“There are a number of important changes that have been made to the draft, responding to concerns that we and others raised. These include:

- *the primacy of the plan is confirmed, ensuring that development must be consistent with the plan*
- *a better definition of sustainable development, based on the 2005 sustainable development strategy*
- *the insertion of references to the use of brownfield land and the need to promote town centres*
- *removal of the incendiary default ‘yes’ to development where there is no plan*
- *reference to the ‘intrinsic character and beauty of the countryside’, recognising the importance of countryside outside designated areas*
- *confirmation that existing plans will remain in force while the new NPPF is introduced, and that there will be a one-year transition for the preparation of new plans*

All these changes improve the document and give it a better tone and balance.”

8. The reaction from the development sector has been more muted. The Executive Chairman of the HBF’s said:-

“The proposals are sensible and will balance a community’s housing needs against environmental and other considerations. We now need to see the system implemented quickly so we can start to tackle the country’s acute housing crisis.

The new system transfers power to Local Authorities for development in their areas. With power comes responsibility and Local Authorities need to demonstrate they are meeting their communities housing needs. Government also needs to keep a close eye on its radical new system to ensure it helps meet the country’s needs.”

The NPPF Housing Policies

9. The concept of “sustainable development” is central to the NPPF and the NPPF makes clear that there is no change to the statutory status of the development plan being the starting point for decision making. Thus, proposed development (including house building) which is in accordance with an up-to-date Local Plan should be given permission and those developments that do not should be refused unless there are material considerations which justify the grant of planning permission notwithstanding the conflict (see

paragraph 12). However, the NPPF contains specific policies relevant to the delivery of housing in Section 6 at paragraphs 47 – 55 and the tone for the application of these policies is set by the Government's express purpose for the policies which is "to boost significantly the supply of housing". These policies are largely directed at local planning authorities when making their Local Plans but are equally relevant to their development control decision taking functions (see below). They can be considered under the following broad headings:-

- Land supply
- Choice and mix
- Bringing back empty properties into use
- Larger scale developments
- Rural housing

Land supply

10. The issue of land supply and whether or not local planning authorities were required to meet their identified housing needs has been bedevilled in the last 24 months by the Government flip-flopping over the revocation of Regional Strategies and, in many cases, the unwelcome housing targets they imposed on districts which led to the ***Cala Homes*** litigation. The position ultimately reached by the Court of Appeal⁵ was that the prospective revocation of Regional Strategies was a material consideration to be taken into account when taking development control decisions (but not in plan making).
11. However, the CA made clear that the weight to be given to that consideration would depend on the stage at which the relevant legislation and environmental assessments of revoking Regional Strategies had reached. Under the Localism Act 2011 the revocation of the Regional Strategies will require secondary legislation once the environmental assessment of revoking them is complete (consultation on the relevant environmental reports closed on 20 January 2012).

⁵ ***R. (on the application of Cala Homes (South) Ltd) v Secretary of State for Communities and Local Government*** [2011] EWCA Civ 639.

12. Whilst the Regional Strategies can be expected to be revoked in the near future they have not yet been revoked and remain (together with their housing allocations) part of the development for the purposes of section 39(6) of the 2004 Act.
13. The NPPF (paragraph 47) now provides an overlay to that position. The first bullet point of paragraph 47 requires local planning authorities to use their evidence base to ensure that their Local Plans meet the full, objectively assessed housing need (market and affordable) in their housing areas consistently with the policies of the NPPF over the plan period, including by identifying key sites.
14. For many authorities the best evidence base remains the allocations in the Regional Strategies but once these are revoked there will be an increased onus on local planning authorities to undertake housing market need/supply assessments to ensure that there is an appropriate evidence base so that their Local Plans do meet their housing needs.
15. The second bullet point requires local planning authorities to identify and update annually a supply of deliverable sites to provide (a) 5 years worth of housing against their (objectively assessed) housing needs; and (b) an additional 5% (brought forward from later in the plan period) to ensure choice and competition in the market for land. Local Planning authorities with a record of persistent under-delivery of housing will have to show an additional 20%. The requirement to demonstrate a 5 year land supply is not new (see paragraph 54 of the revoked PPS3) but the requirement to provide an additional 5% or 20% is, and will put additional pressure on many local planning authorities already struggling to demonstrate a 5 year land supply.
16. Moreover, the definition of “deliverable sites” in footnote 11 is stricter than the old PPS3 definition. In addition to sites being available and offering a suitable location for development now, it requires there to be a *realistic* (previously “reasonable”) prospect that housing will be delivered on the site within 5 years and that development of the site is viable.

17. It will be of some consolation to local planning authorities that the NPPF definition makes clear that sites with planning permission should be considered “deliverable” until permission expires unless there is clear evidence that a scheme will not be implemented within 5 years e.g. the scheme is no longer viable. Moreover, paragraph 48 permits local planning authorities to make a realistic allowance for windfall sites in the 5 year supply provided they have *compelling* evidence that such sites have previously become available and will continue to be a reliable source of supply.
18. Whether an allowance is realistic is to be judged against the SHLAA, historic windfall rates and expected trends. Residential gardens cannot be included in any windfall allowance and paragraph 53 expressly provides that local planning authorities should consider setting policies resisting the inappropriate development of garden land.
19. I anticipate that whether sites are or are not deliverable when assessing the 5 year + 5% supply of housing land will continue to be a considerable source of dispute between local planning authorities and developers. The requirement for local planning authorities to demonstrate that sites are “deliverable” within the meaning of the NPPF definition and show that there is compelling evidence to support the inclusion of windfall sites in calculating the 5 year supply is in the current economic undoubtedly going to put local authorities under further pressure still when seeking to demonstrate that they have a 5 year supply of housing land.
20. The third bullet looks to the position later in the plan period i.e. years 6 – 10 and, where possible, years 11 – 15 and requires local planning authorities to identify a supply of “developable” housing sites or broad locations. Again the definition of “developable” in footnote 12 is important (to be considered “developable”, sites (a) should be in a suitable location for housing; (b) should have a reasonable prospect of being available; and (c) can viably be developed at the point envisaged).
21. The fourth bullet requires local planning authorities to illustrate the expected rate of housing (market and affordable) delivery through a housing trajectory

for the plan period and set out a housing implementation strategy to show how they will maintain delivery of the 5 year supply to meet their housing targets.

22. The fifth bullet requires local planning authorities to set out the housing density for their own areas to reflect local circumstances.
23. The criticality of local planning authorities being able to demonstrate a 5 year land supply in accordance with paragraphs 47 and 48 is to be found in paragraph 49 which states (footnote 5 inserted):-

“Housing applications should be considered in the context of the presumption in favour of sustainable development⁶. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable sites.”

Choice and mix

24. Paragraph 50 reflects the heading to section 6 of the NPPF and the Government’s wish to deliver a wide choice of high quality homes, widen home ownership and to create sustainable, inclusive and mixed communities. To that end local planning authorities are required to plan for a mix of housing by identifying the size, type, tenure and range of housing required in particular locations to reflect local demand. This will require local planning authorities to look at current and future demographic trends, market trends and the specific needs of different groups (e.g. families with children, older people and service families).
25. Where local planning authorities identify a need for affordable housing they must set policies for meeting that need on site and off-site provision or contributions will require robust justification. Further, they will have to contribute to the creation of mixed and balanced communities. An unintended consequence of the requirement to reflect local demand an plan for a mix of

⁶ In relation to development control decisions the presumption in favour of sustainable development means (a) approving development that accord with the development plan; (b) and granting permission where the development plan is “*absent, silent or relevant policies are out of date*” unless there are significant adverse impacts which demonstrably outweigh the benefits or there are specific NPPF policies – see [paragraph 14](#)).

housing by identifying the size, type and tenure etc required in particular locations may be that greater weight is given by local planning authorities and Inspectors on appeal to the argument frequently advanced by existing residents that affordable housing is not appropriate for their village or town because the need lies elsewhere in the district.

Bringing back empty properties into use

26. The strategy of bringing back into use empty properties is reinforced by the reference in paragraph 51 to local authorities (a) acquiring empty properties using compulsory purchase powers; and (b) approving applications for changes of use from commercial (i.e. a B class use) to residential if there is an identified need for additional housing, unless there are strong economic reasons why such development is not appropriate (e.g. there is a shortage of such land).

Larger scale developments

27. Paragraph 52 contemplates meeting housing need through larger scale developments and gives as examples new settlements or extensions to existing villages and towns (provided they follow the principles of Garden Cities) but there doesn't appear to be any real heart in that policy.

Rural housing

28. The problems of delivering housing, and in particular affordable housing, in rural areas is addressed in paragraph 54 through the encouragement of local planning authorities to include in their plans appropriate rural exception sites and significantly by local planning authorities considering whether allowing some market housing to facilitate the significant provision of additional affordable housing should be allowed. This is an important concession and recognises the benefits of “enabling” development being allowed in areas where development would not ordinarily be approved if it results in significant additional affordable housing being provided to meet local needs.
29. Paragraph 55 also attempts to move the debate along by giving as an example of sustainable development new housing in one village supporting the services

in another settlement forming part of the same group and by doing so maintaining the vitality of those rural communities. However, consistently with previous policy the new isolated homes in the countryside are to be resisted unless there are special circumstances. The list given in paragraph 55 of such circumstances is not exclusive and includes meeting the essential needs of a rural worker, to allow enabling development to secure the future of a heritage asset, re-using redundant/disused buildings (if it would lead to an enhancement of the immediate setting) and new buildings of exceptional quality or innovative design.

Other NPPF policies relevant to housing

30. Any plan making or development control decision relating to housing cannot be taken simply by applying the policies in section 6 of the NPPF given the “definition” of sustainable development which requires paragraphs 18 – 219 of the NPPF to be taken as a whole and the three stated dimensions to sustainable development (economic, social and environmental) – see paragraph 7. However, some are plainly likely to be more relevant than others. In no order of importance these are:-

- The emphasis put on securing high quality and a good standard of amenity for existing and future residents – see paragraph 17 (4th bullet) and section 7 of the NPPF but with the caveat that local plan policies and decisions should not attempt to impose architectural styles or particular tastes nor stifle innovation and originality (see paragraph 60). Indeed, paragraph 63 states that *great* weight should be given to outstanding or innovative design.
- Encouraging the effective use of land by reusing brownfield land – see paragraph 17 (8th bullet) and paragraph 111.
- Actively manage patterns of growth and focus development in locations which are or can be made sustainable – paragraph 17 (11th bullet).
- Conserving *and* enhancing biodiversity – see paragraph 17 (7th bullet) and paragraph 118.

- The emphasis on local planning authorities approaching their decision taking functions in a positive way which imposes an obligation on them to look for solutions not problems (i.e. to be proactive and not simply negatively reactive) – see paragraphs 186 & 187.

Transitional provisions

31. Paragraphs 214 and 215 are particularly relevant to development control decisions and provide a breathing period of 12 months to decision takers who may continue to give full weight to relevant policies adopted since 2004 notwithstanding that there may be some conflict between those policies and the policies in the NPPF. In relation to policies adopted before 2004 and after the 12 months expire, the weight to be given to local policies which conflict with the policies of the NPPF will vary according to their degree of consistency. Bearing in mind that only just over 50% of local planning authorities have adopted core strategies since 2004, the expectation on them to adopt or revise plans appears wholly unrealistic. And if that is correct, it might be expected that from the end of March 2013 those local planning authorities may find themselves increasingly on the back foot if they have to rely on out of date and or inconsistent plans when resisting housing applications on sites outside of historically defined settlement boundaries. Even before then the transitional provisions are unlikely to save them if they cannot demonstrate a 5 year land supply.

Conclusion

32. Is the NPPF going to result in the grant of more planning permissions for housing development? It ought to but whether it does will largely depend on whether local planning authorities (officers and members) embrace the direction of travel that the NPPF seeks to take them in. To do so they will have to get their housing needs/land supply assessments up to date in short order and adopt or revise existing development plan documents. If they fail to do so, there will be a steady drip of appeals which from April next year may start to become a stream.

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