

The Revised NPPF Local Plans

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Scope



- Chapter 3: plan-making
- Broad guidance: other chapters have more detailed guidance, covered in other presentations
- Key change: clearer emphasis on distinction between strategic and other policy
- Transitional provisions

Strategic policies: statutory context



- **PCPA 2004:**
 - s. 17(3): local development documents must as a whole set out policies relating to the development and use of land in LPA area.
 - S. 17(7): Regulations may prescribe which LDDs are development plan documents
 - **S. 19(1B)-(1C):** each LPA must identify the “strategic priorities for the development and use of land in the authority's area”; and “policies to address those priorities” must be set out in the local planning authority's development plan documents (taken as a whole)”.
- **NB Town and Country Planning (Local Planning) (England) Regulations 2012:**
 - reg 2: development plan documents prescribed as those falling with definition of local plan (in reg 5(1)(a)(i), (ii) or (iv) or 5(2)(a) or(b))
 - Reg 5(1)(a): any document prepared by LPA on own or in cooperation with one or more LPAs containing statements regarding the development and use of land; site allocations; development management and site allocation policies;
 - Reg 5(2): any document which contains policies in relation to part of LPA area identified as an area of significant change or special conservation; and any other document including a site allocation policy.
- Local plans must contain the strategic policies; but will be wider in scope

Strategic/non-strategic policies: approach



- [17]: development plan “must include strategic policies to address each local planning authority’s priorities for the development and use of land in its area”
- Can be contained in individual/joint local plans and/or spatial development strategies produced by elected Mayors/combined authority where plan-making powers conferred
- [18]: “policies to address non-strategic matters should be included in local plans that contain both strategic and non-strategic policies, and/or in local or neighbourhood plans that contain just non-strategic policies”

Which policies are strategic? (1)



- [20]: strategic policies should “set out an overall strategy for the pattern, scale and quality of development” and make “sufficient provision” for following in line with PIFSD:
 - Homes (including affordable housing), employment, retail, leisure and other commercial development
 - Infrastructure (transport, telecoms, security, water, flood risk etc
 - Community facilities (health, education “cultural infrastructure”
 - Climate change mitigation and adaptation, conservation/enhancement of the natural, built, historic environment [NB largely unchanged from old [156]]
- [23]: they should provide clear strategy for bringing sufficient land forward to meet OAN over (minimum 15-year) plan period ([22]) in line with PIFSD, including allocating sufficient sites

Which policies are strategic? (2)



- [21]: they should be “limited to those necessary to address the strategic priorities for the area (and any relevant cross-boundary issues)”; and be explicitly identified as such
- they “should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies”

Which policies are strategic? (3)



- NB [34] development contributions: plans should set out contributions expected from development, including “setting out the levels and types of AH provision required, along with other infrastructure”; “should not undermine the deliverability of the plan”
- Not specifically identified as strategic/non-strategic
- See eg McCarthy & Stone and Churchill Retirement Living and others v. Mayor of London [2018] EWHC 1202 (Admin):
 - Greater London Authority Act 1999 s. 334 - spatial development strategy “must deal only with matters which are of strategic importance to Greater London” [NB TCP (Mayor of London) Order 2008 - applications for development of “potential strategic significance”, or PSI, sent to Mayor (includes development of more than 150 houses or flats)]
 - Ouseley J did not resolve question whether this would include affordable housing policy setting out threshold approach and requirements for viability assessment, which “may contain a level of detail for the control of negotiations in quite small forms of development, and larger non-PSI developments...though I do not doubt that the levels of affordable housing developed on new housing sites can be seen as a strategic matter” [32]
 - NB emphasis on “considerable room for the Court to respect the plan-maker’s judgment on what is to receive the weight of the development plan, or is too detailed for a spatial strategy” [34]

Which policies are non-strategic?



- [28]: “more detailed policies for specific areas, neighbourhoods and types of development”
- Can include allocating sites, infrastructure provision and community facilities at local level, establishing design principles, conserving and enhancing historic environment and setting out other development management policies
- [29]-[30]: distinction drawn with neighbourhood plans:
 - NPs should not promote less development than, or undermine, strategic policies
 - Once NPs in force policies take precedence over existing non-strategic policies in local plan, unless superseded by subsequent adoption of strategic/non-strategic policy

Co-operation



- [24]-[26]: strategic policy-making authorities should collaborate
- [27]: should prepare “statements of common ground” documenting cross-boundary matters being addressed and progress
- SoCGs should be made publicly available through plan-making process
- Moves on from old [181] which required LPAs to “demonstrate evidence” of co-operation

Presumption in favour of sustainable development



- Old [14] rewritten in new [11]
- No “golden thread” now
- “Strategic policies” should provide for OAN “as a minimum” as well as “needs that cannot be met within neighbouring areas” as established through SoCGs ([fn 5])

Presumption in favour of sustainable development: exceptions



- Main change: old exception to meeting OAN where “specific policies” restrict development, with examples in fn 9, is now...
- Closed list of policies that “protect areas or assets of particular importance” (NB does not include policies in development plans - cf *Hopkins Homes* [14])
- List at fn 6:
 - now specifically cross-refers ([176]) to pSPAs/SACs, listed or proposed Ramsar sites and sites identified/required as compensatory measures for adverse effects on habitats sites;
 - also includes “irreplaceable habitats” eg ancient woodland, aged or veteran trees
- Exception applies where “the application” of such policies provides a “strong reason” for restricting the overall scale, type or distribution of development

Soundness



- Main tests remain (old [182] cf new [36]) but:
 - “Positively prepared” requires a strategy which seeks to meet OAN “as a minimum,” accommodating unmet need from neighbouring authorities where “practical” to do so;
 - “Justified” is now just “an appropriate strategy” rather than “the most appropriate strategy”
 - “Effective” more specifically requires cross-boundary matters to have been “dealt with rather than deferred”, as evidenced by statements of common ground
- Test to be applied to non-strategic policies “in a proportionate way”, taking into account extent to which they are consistent with relevant strategic policies

Review



- [33]: policies in local plans should be reviewed to assess whether they need updating “at least once” every 5 years, and updated as necessary
- Cf reg 10A(1) 2012 Regs: reviews of local plans “must be completed every five years, starting from the date of adoption”

Transitional provisions (1)



- [212]: plans may need to be revised to reflect policy changes which this replacement Framework has made...”should be progressed as quickly as possible”
- But [214] “policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted on or before 24 January 2019”
- NB if plans withdrawn/do not proceed to development plan, new policies will apply to any new plan ([214])

Transitional provisions (2)



- Housing figures for plans submitted before 24 January 2019
- Differing approaches? Cf:
 - Peterborough LP Inspector 22.8.18 (not sound to use standard methodology - being reviewed by government; and there is up-to-date SHMA)
 - East Cambs LP Inspector 30.7.18 (sound to use standard method to set the OAN, in context of a SHMA of considerable vintage)
 - Plans submitted but substantial reductions in household projections anticipated in September?
- Decision-taking after plans adopted following old guidance?