

National Development Management Policies



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The existing position: national policy in plan-making

To be found “sound” in an independent examination, a draft local plan must be (NPPF para. 35):

“**Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.”

The existing position: national policy in plan-making

Neighbourhood plans must meet certain “basic conditions” before they can come into force.

One of these is that “having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan”: para. 8 of Sch. 4B to the 1990 Act.

The existing position: national policy in decision-taking

Section 38(6) of the Planning and Compulsory Purchase Act 2004

*“Where, in making any determination under the planning Acts, regard is to be had to **the development plan**, the **determination shall be made in accordance with the plan unless material considerations indicate otherwise.**”*

The development plan for an area comprises the *“development plan documents (taken as a whole) which have been adopted ... in relation to that area”* and *“the neighbourhood development plans which have been made in relation to that area”*: section 38(3).

The existing position: national policy in decision-taking

“The National Planning Policy Framework ... is a material consideration in planning decisions”: NPPF, para. 2.

“Other statements of government policy may be material when ... deciding applications, such as relevant Written Ministerial Statements and endorsed recommendations of the National Infrastructure Commission”: NPPF, para. 6.

The existing position: national policy in decision-taking

Inconsistency between the development plan and more recent national policy can be a basis for concluding under section 38(6) that material considerations do justify a departure from the development plan.

NPPF Para. 218: The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Plans may also need to be revised to reflect policy changes which this Framework has made

NPPF Para. 219: However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

The existing position: national policy in decision-taking

NPPF para. 11(d)

If the “most important” policies in the development plan for determining an application are “out-of-date”, planning permission should be granted unless:

- the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

The existing position: national policy in decision-taking

A policy is out-of-date if it is deemed to be out-of-date due to the absence of a five year housing land supply (footnote 7 NPPF)

OR

It has been “overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy, or for some other reason”

See e.g. ***Peel Investments (North) Ltd v Secretary of State for Housing, Communities And Local Government*** [2020] EWCA Civ 1175, para. 66.

The existing position: national policy in decision-taking

NPPF para. 12:

The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted.

LURB: what will change?

Replacing section 38(6), new section 38(5A)-(5C):

(5A) For the purposes of any area in England, subsections (5B) and (5C) apply if, for the purposes of any determination to be made under the planning Acts, regard is to be had to—

(a) the development plan, and

(b) any national development management policies.

(5B) Subject to subsections (5) and (5C), the determination must be made in accordance with the development plan and any national development management policies, unless material considerations strongly indicate otherwise.

(5C) If to any extent the development plan conflicts with a national development management policy, the conflict must be resolved in favour of the national development management policy.”

What is a NDMP?

New section 38ZA - Meaning of “national development management policy”

- (1) A “national development management policy” is a policy (however expressed) of the Secretary of State in relation to the development or use of land in England, or any part of England, which the Secretary of State by direction designates as a national development management policy.
- (2) The Secretary of State may—
- (a) revoke a direction under subsection (1);
 - (b) modify a national development management policy.

Modifying or revoking a NDMP direction

Section 38ZA(3):

“Before making or revoking a direction under subsection (1), or modifying a national development management policy, the Secretary of State must ensure that such consultation with, and participation by, the public or any bodies or persons (if any) as the Secretary of State thinks appropriate takes place”

Duty to “have regard to” NDMPs in plan-making

In preparing plans (e.g. local plans, minerals and waste plans etc), the plan-making body must “have regard to ... national development management policies”: see e.g. new section 15CA(5)(c) of the 2004 Act.

Avoiding inconsistency and repetition with NDMPs

The following documents "must not be inconsistent with (or in substance) repeat any national development management policy":

1. The spatial development strategy for London (i.e. the London Plan) – see new section 334(10) of the Greater London Authority Act 1999.
2. Neighbourhood development plans – see new section 38B(2C)(b) of the 2004 Act.
3. Joint spatial development strategies: new section 15AA(9)(c) of 2004 Act.
4. Local plans: new section 15C(7)(b) of the 2004 Act.
5. Minerals and waste plans: new section 15CB(6)(b) of the 2004 Act.
6. Supplementary plans: new section 15CC(10)(b) of the 2004 Act.
7. Joint local plans: new section 15IA(2) of the 2004 Act.

Avoiding inconsistency: SoS directions

If at any time it appears to the Secretary of State that it is expedient to do so for the purpose of avoiding any inconsistency with current national policies, the Secretary of State may, at any time before adoption of the joint spatial development strategy, give a direction to participating authorities not to adopt the document except in a form which includes modifications in such respects as are in directed in the direction in order to remove the inconsistency.

Where a direction is given, there can be no adoption unless the plan-making body satisfies the Secretary of State that they have made the modifications necessary to conform with the direction, or the direction is withdrawn.

(New section 15AD(6)-(8) of the 2004 Act)

Alongside the LURB ...

There will be an overhaul of the NPPF (following a two-stage consultation):

1. Removing the requirement for authorities to maintain a five-year housing land supply where their local plan has been adopted within the past 5 years.
2. Deciding on which policies will be in the suite of “national development management policies” (which will be “derived from the policies set out currently in the [NPPF] where these are intended to guide decision-making”).
3. The “rest” of the NPPF will be “re-focused on setting out the principles to be taken into account in plan-making”.
4. “Streamlining national policy, making it more accessible and user-friendly”.

Comments

- Huge shake-up of the planning system.
- Promoted as creating a “genuinely plan-led system”, but does it instead signal the demise of the plan-led system and the supremacy of national policy?
- Avoids the awkwardness of how to reconcile the importance of the development plan with the importance of the NPPF – will hopefully reduce debates on whether plans are out-of-date due to NPPF inconsistency.
- Clearer division of labour between national and local policies ...
- Similarly, avoids tensions between s.38(6) and NPPF para. 11(d) because national policy trumps local policy where inconsistent. End of “tilted balance”?
- Obviously sensible to put all generic development management policies in one document rather than repeated across local plans.
- How will the tests of “inconsistency” and “repetition” be applied in practice?

Thank you for listening

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