

LOCAL PLAN SUB-COMMITTEE – 28 FEBRUARY 2023

PART I – NOT DELEGATED

5. GOVERNMENT CONSULTATION - LEVELLING-UP AND REGENERATION BILL: REFORMS TO NATIONAL PLANNING POLICY (DCES)

1 Summary

This report provides an overview of the proposals contained within the Government's Levelling Up and Regeneration Bill consultation on reforms to national planning policy and seeks approval of the officer response to the consultation in Appendix 1 to this report.

2 Details

2.1 The Government has launched a consultation on planning policy reforms entitled 'Levelling-up and Regeneration Bill: reforms to national planning policy'. The consultation ranges from discussing proposals that will be brought in as part of the Bill, or subsequent secondary legislation, to changes that the Government hope to bring forward through amendments to the National Planning Policy Framework (NPPF) this spring.

2.2 The Government further commits to a 'wider review' of the NPPF later this year. Therefore, the consultation contains three sets of proposals to reform the planning agenda, with the most sweeping of changes to the plan-making system being introduced in 2024 onwards. The consultation closes on 2 March 2023 and this report considers the impact of the changes from the perspective of Three Rivers within the SW Hertfordshire context.

2.3 The Government intends to respond to the consultation in Spring 2023, publishing the Framework revisions as part of this, so that policy changes can take effect as soon as possible.

2.4 The consultation document sets out specific changes that the Government propose to make and includes the following:

- To make clear how housing figures should be derived and applied so that communities can respond to local circumstances;
- Changing the circumstances in which the five-year housing land supply requirement needs to be demonstrated;
- Addressing issues in the operation of the housing delivery and land supply tests as they relate to local authority performance;
- Tackling problems of slow build out by increasing the accountability of developers and data regarding their performance on housing delivery;
- Promoting more beautiful homes;
- Encouraging 'gentle densification';
- Safeguarding existing biodiversity on sites proposed for biodiversity net gain;

- Making sure that food security considerations are factored into planning decisions that affect high quality farmland;
- Seeking views on how planning policy could address climate adaptation, alongside ongoing work on flood risk assessments and exploring a form of carbon assessment for development;
- Encouraging local planning authorities to support the role of community-led groups in delivering affordable housing;
- Setting clearer expectations around planning for older peoples' housing;
- Increasing the requirement for local support for onshore wind development;
- Outlining the programme of transition from the current method of Local Plan preparation to the new approach following the enactment of the Levelling Up and Regeneration Bill;
- Outlining the approach to preparing National Development Management Policies;

2.5 The consultation document sets out the policy objectives that are designed to support governments wider objectives of making the planning system work better for communities, delivering more homes through sustainable development, building pride in place and supporting levelling up more generally. These are to be achieved under the five headings of:

- Building beautiful and refusing ugliness
- Securing the infrastructure needed to support development
- More democratic engagement with communities on local plans
- Better environmental outcomes
- Empowering communities to shape their neighbourhoods

2.6 Much of the narrative in the consultation shows strong support of Local Plans and a plan led system, and many of the proposals are predicated on encouraging the delivery of Local Plans.

Housing Need

2.7 Local authorities will be expected to continue to use local housing need, assessed through the Government's standard method, to inform the preparation of their plans; although the ability to use an alternative approach where there are exceptional circumstances that can be justified will be retained. They propose to make it clearer in the NPPF that the outcome of the standard method is an advisory starting point to inform plan-making. It should be noted at this stage there are no proposed changes to the standard method calculation itself and as such this is not being consulted on. The Government has stated intentions to review the implications on the standard method of the new household projections data based on the 2021 census, which is due to be published in 2024.

- 2.8 They also propose to update the planning guidance to indicate which types of local characteristics may justify the use of the standard method. We will therefore need to demonstrate 'exceptional circumstances' if we wish to use a different approach to the standard method. Should the Council choose to deviate from the standard method we will need to provide evidence justifying why we have taken a different approach and this will be considered in detail by the independent Inspector at the Local Plan examination.
- 2.9 Overall, the changes proposed to support local authorities in setting local housing requirements that respond to demographic and affordability pressures whilst being realistic given local constraints are welcomed.
- 2.10 In addition, they state that building at densities which would be significantly out of character with the existing area may be considered an adverse impact which could outweigh the benefits of meeting need in full. As such the Council would need to carefully consider the benefits of building at higher densities against the impact on local character.

Green Belt and housing need

- 2.11 The Government have clearly set out through their proposed changes to the NPPF that local planning authorities will not be required to alter Green Belt boundaries if this would be the only way of meeting need in full. However, authorities would still be able to alter Green Belt boundaries if they wish, if they can demonstrate exceptional circumstances exist. Members will need to consider whether exceptional circumstances exist through the plan-making process. We may not have to remove as much land from the Green Belt as previously considered, however to meet the District's needs especially regarding affordable housing and infrastructure it is likely that we would still need to release some Green Belt land.

A more diverse range of houses

- 2.12 The consultation reaffirms the Government's commitment to "delivering the types of homes that communities want and need, more genuinely affordable housing and specific provision for older people".
- 2.13 The consultation sets out the intention to make clear that local planning authorities should give greater importance in planning for affordable housing for social rent and seeks views on how this can be delivered alongside the existing provisions for affordable housing including affordable home ownership. This is supported by officers as there is a historic under delivery of homes for Social Rent across the District.
- 2.14 The consultation proposes adding an additional expectation that within ensuring that the needs of older people are met, particular regard is given to retirement housing, housing-with-care and care homes, which are important typologies of housing that can help support our ageing population. The South West Hertfordshire authorities are in the process of going out to tender for an update to the Local Housing Needs Assessment, an important piece of evidence work for the Local Plan. An emphasis on considering older peoples' needs has been included in the brief.
- 2.15 Paragraph 69 of the existing NPPF sets out that local planning authorities should identify land to accommodate at least 10% of their housing requirement on sites no larger than one hectare; unless it can be shown, through the preparation of relevant plan policies, that there are strong reasons why this 10% target cannot be achieved. The consultation is inviting comments on whether paragraph 69 of the existing

Framework could be strengthened to encourage greater use of small sites, particularly in urban areas, to speed up the delivery of housing (including affordable housing), give greater confidence and certainty to SME builders and diversify the house building market. Although this is broadly supported, officers have concerns that an over emphasis on smaller sites may lead to less infrastructure provision.

- 2.16 The government wants to encourage local planning authorities to support the role of community-led groups in delivering affordable housing - including on exception sites - by referencing community-led developments specifically. The consultation proposes that the definition of “community-led developments” in the Glossary is added to assist in the implementation of this policy change.

Design

- 2.17 The consultation proposes that all local planning authorities will be required to have a design code in place covering their entire area. This is welcomed however it should be noted that the Council does not currently have the skills in house to produce a design code so meeting this requirement will need additional resources.
- 2.18 Proposed changes to the NPPF will emphasise the role of beauty and place-making in strategic policies, make a stronger link between good design and beauty by making additions to Chapters 6, 8 and 12 of the NPPF to further reflect the importance of beautiful development as recognised by the Building Better, Building Beautiful Commission report. Officers are concerned that using terms such as ‘beauty are overly subjective making it difficult to determine planning applications on this basis.
- 2.19 In “embracing gentle densities”, the consultation states “all local planning authorities should take a positive approach towards well designed upward extension schemes, particularly mansard roofs. The consultation proposes a reference to mansard roofs as an appropriate form of upward extension to recognise their value in securing gentle densification where appropriate. Officers feel this is overly detailed for national planning policy and that existing policy is sufficient in terms of upwards extensions.

5 Year Housing Land Supply

- 2.20 The consultation sets out that past over-delivery can be taken into account and any surplus be deducted from the new plan. It is unclear how this would be calculated. We were over delivering against the existing local plan target of 180 dwellings per annum however the Local Plan is over 5 years old and as such is considered out-of-date. Further clarity will need to be provided on this.
- 2.21 Authorities with up-to-date Local Plans will no longer be required to demonstrate a 5-Year Housing Land Supply. Our current plan is out-of-date (over 5 years old) so at this stage it will not make any difference to our position. The proposal is supported as when the new Local Plan is adopted we will not have to demonstrate a 5 Year Housing Land supply as the Local Plan will plan for the appropriate amount of growth across the plan period.
- 2.22 It is also being proposed that the buffers be removed from the 5-year housing land supply and during transitional arrangements that only a 4-year supply would be required. We can currently demonstrate a 1.9 year supply of housing so until we have a new plan in place these changes make little difference.

Housing Delivery Test

- 2.23 It is proposed that an additional permissions based test be added to the Housing Delivery Test. So rather than just being tested on delivery the Council may be able to demonstrate that enough permissions were generated to meet its housing target in which case it would still pass the Housing Delivery Test even if these permissions did not result in all the homes being built out. A buffer of 15% would be factored in to account for expected 'lapsed permissions'. In practice this will only make a difference once a new plan is in place. As things stand we are not generating enough permissions to meet demand. The inclusion of a permissions based test is supported by officers as granting permissions is directly within the Council's control whereas the rate these permissions are built out, if at all, are not.

Neighbourhood Plans

- 2.24 The Government proposes to increase the time period that Neighbourhood Plans are protected when a local planning authorities' Local Plan is out-of-date. This will increase from the current protection for neighbourhood plans that are two years old to five years old.
- 2.25 They are also proposing to remove the tests meaning LPAs have to demonstrate a 5 Year Housing Land Supply and pass the Housing Delivery Test from the NPPF. These changes will mean that the District's neighbourhood plans would remain in force and help resist speculative planning applications in their neighbourhood areas.

National Development Management Policies

- 2.26 The consultation introduces a suite of National Development Management Policies (NDMPs) with the intension that these NDMPs would cover planning considerations that apply regularly in decision-making across England or significant parts of it, such as general policies for conserving heritage assets, and preventing inappropriate development in the Green Belt and areas of high flood risk.
- 2.27 Once introduced, the NDMPs would be set out in a separate document to the rest of the NPPF. The latter would be re-focused on principles for plan-making (i.e. the general approach to allocating land for development in plans and protecting areas of value) and would not carry the statutory weight conveyed by the Bill, although they would still be capable of acting as material considerations where relevant.
- 2.28 The National Development Management Policies would fall within 3 broad categories:
- Existing policies aimed at decision-making already provided within the National Planning Policy Framework, subject to these being reviewed on a case-by-case basis so that the rationale for their inclusion is clear;
 - Selective new additions to reflect new national priorities, for example net zero policies that it would be difficult to develop evidence to support at a district level, but which are nationally important;
 - Selective new additions to close 'gaps' where existing national policy is silent on planning considerations that regularly affect decision-making across the country (or significant parts of it).
- 2.29 These NDMPs will be implemented following the passing of the Levelling Up and Regeneration Bill (LURB) later this year. There is limited idea of the scope of these national policies but there is a commitment to consulting on the detail of them before their introduction.

Agricultural land, habitats and biodiversity

- 2.30 The NPPF currently expects that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the wider benefits from natural capital and ecosystem services including the economic and other benefits of the best and most versatile agricultural land (Best and Most Versatile land is defined as grades 1-3a in the Agricultural Land Classification).
- 2.31 To build on this, the consultation proposes a change to the current Framework footnote 58 by adding detail on the consideration that should be given to the relative value of agricultural land for food production, where significant development of higher quality agricultural land is demonstrated to be necessary, compared to areas of poorer quality land. This is supported by officers though it has been difficult to get hold of this information in the past.
- 2.32 Other proposals planned as part of the future wider review relate to the potential for further protection for irreplaceable habitats, such as ancient woodland, and the intention to work with Defra to avoid the degradation of sites before planning applications are submitted, which will be important in terms of calculations of biodiversity net gain.

Climate change and flood risk management

- 2.33 The consultation reaffirms the government's commitment to its Net Zero Strategy. There is mention of the government's Transport Decarbonisation Plan, to further strengthen the links between planning and transport in pursuing sustainable patterns of development and an improved built environment; and the expectation of local plans to show how their approach should support this. This will form part of the work intended for next year to create a new suite of National Development Management Policies, and to re-focus the National Planning Policy Framework on principles for plan-making. The consultation adds that the government intends to consult in 2023 on Quantifiable Carbon Reductions guidance as part of the statutory Local Transport Plans process.
- 2.34 Other proposals relate to the potential case for implementing Schedule 3 to the Flood and Water Management Act 2010 concerning Sustainable Drainage Systems (SuDS). The review will ensure that the commencement of Schedule 3 in England will support the objectives of alleviating pressures on the sewer network and reducing flood risk, as well as improving water quality, amenity, biodiversity, and rainwater harvesting. If implemented, this Schedule would introduce standards for new sustainable drainage systems as well as making connection to public sewers conditional of approval that the drainage system meets the national standards.
- 2.35 Alongside this, there are proposals to include a review of policy and guidance in relation to the production of Strategic Flood Risk Assessments to encourage maximum coverage and more frequent updates to ensure up-to-date assessments are available to support both plan preparation and decision making.
- 2.36 Government is also setting targets under the Environment Act, and proposes to review the strategic objectives set out in planning policy to support this ahead of the wider review of national planning policy next year, with government seeking views on the approach to carbon assessments and the role planning can play in supporting climate adaptation.

Transitional arrangements

- 2.37 The Government intends to speed up the plan-making process. Reforms to Local Plan preparation are expected to be introduced in late 2024. There is an expectation that regulations will be updated to set clear timetables for plan production, that they will be produced within 30 months and updated at least every five years. Officers reserve judgement on whether it is realistic to produce Local Plans in 30 months however some of the proposals in this consultation will speed up the plan-making process. However, some of the proposals will result in more work and will require additional resources.
- 2.38 The government is proposing that plan makers will have until 30 June 2025 to submit their local plans under the existing legal requirements and duties. It is also proposed that all independent examinations of local plans, must be concluded, with plans adopted, by 31 December 2026. These plans will be examined under the current legislation.
- 2.39 Authorities that do not meet the 30 June 2025 submission deadline for 'old-style' plans will need to prepare plans under the new plan-making system. The Council's current Local Development Scheme (December 2022) sets out that the Local Plan is expected to be submitted for examination in August 2025. This means the Local Plan would need to be prepared under the new legislation and policy.
- 2.40 If the Council were to revise its LDS in order to aim for earlier submission it could prepare its Local Plan under the existing rules, however this would be considered a risky approach as it is difficult to plan for delays. It should be noted that should the plan be submitted post June 2025 as expected then the Council will need to take into consideration all of the changes to national policy and legislation in preparing its plan.
- 2.41 Although we do not yet know the results of this consultation or subsequent consultations key changes we may need to consider in preparing a 'new style' Local Plan may include the introduction of national development management policies and the requirement to produce a design code for the District.
- 2.42 The earliest that a 'new style' Local Plan examination can take place is October 2026, so if we are to prepare a 'new style' plan it is unlikely to be adopted before 2027.

Neighbourhood Plans

- 2.43 Neighbourhood plans submitted for examination after 30 June 2025 will be required to comply with the new legal framework. 'Made' neighbourhood plans prepared under the current system will continue to remain in force under the reformed system until they are replaced.

Supplementary Planning Documents

- 2.44 It is proposed that supplementary planning documents will be replaced by 'supplementary plans' which will have to go through their own examination process prior to being adopted. Existing supplementary planning documents would expire after 30 months the 30 June 2025 deadline, so at the end of December 2027.
- 2.45 This could result in additional work for the planning policy team especially if supplementary plans are required to go through examination. This may result in a need for more resources.

Delivering a more proportionate approach to examination

2.46 The Government proposes “to simplify and amend the tests of ‘soundness’ through which plans are examined, by removing the explicit test that plans are ‘justified’ to allow a proportionate approach to their examination. Instead, the examination would assess whether the local planning authority’s proposed target meets need so far as possible, takes into account other policies in the NPPF, and that the development plan is effective and deliverable. However, authorities would still need to produce evidence to inform and explain their plan, and to satisfy requirements for environmental assessment.

2.47 Further clarification will need to be provided on what evidence will be required to support the plan as it is not clear at this stage what is being removed.

Duty to Co-operate

2.48 Duty to co-operate is proposed to be removed and replaced with an “alignment policy” as part of a future revised NPPF. Further consultation on what should constitute the alignment policy will be undertaken to understand what that might mean in practice.

Developer performance

2.49 The consultation also sets out proposals that relate to the potential to introduce measures to encourage developers to build, including publishing data on poor delivery. The consultation proposes to introduce the following measures, via changes to national planning policy:

- Housebuilders will be required to formally notify local authorities, via a Development Commencement Notice (DCN), when they commence development;
- Streamline existing powers for local authorities to serve a completion notice (which has the effect that if the development is not completed within the period specified in the notice, the planning permission for unfinished development lapses), making the process quicker and simpler;
- Housing developers will be required to report annually to local authorities on their actual delivery of housing against a proposed trajectory that they submit on commencing a scheme for which they have permission; and
- Give local planning authorities will have discretion to decide whether to entertain future planning applications made by developers who fail to build out earlier permissions granted on the same land. a) Publishing data on developers of sites over a certain size in cases where they fail to build out according to their commitments.

2.50 Officers are concerned about this may lead to a ‘blacklisting’ approach where developers are rejected from applying for planning permission without having the opportunity to explain reasons for past under delivery.

2.51 It should be noted by Members that the detail for many of the Government’s proposals in this report are yet to be provided. This is a consultation and not all the proposed changes will necessarily translate into updates to policy. As things stand existing policy is still in force.

2.52 The whole consultation document can be viewed at:

<https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy>.

2.53 The track changes version of NPPF for consultation can be viewed at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1126647/NPPF_July_2021_-_showing_proposed_changes.pdf

3 Policy/Budget Reference and Implications

The recommendations in this report are within the Council's agreed policy and budgets.

4 Financial, Legal, Equal Opportunities, Staffing, Environmental, Community Safety, Public Health, Customer Services Centre, Communications & Website, Risk Management and Health & Safety Implications

4.1 None specific.

5 Recommendation

5.1 That the Local Plan Sub-Committee note the contents of this report, and considers the draft officer response to the consultation in Appendix 1 and provide any comments or amendments.

5.2 That the final officer response be agreed under Part 3 of the Council Constitution, Section 8, Urgent Action, Points 8.1 to 8.3 to be submitted by 2 March.

Background Papers

National Planning Policy Framework (2021)

Planning Practice Guidance (2022)

Levelling-up and Regeneration Bill: reforms to national planning policy (2022)

National Planning Policy Framework: draft text for consultation (2022)

Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act 2011)

APPENDICES

Appendix 1: draft response to the Government's Levelling Up and Regeneration Bill consultation on reforms to national planning policy