

What next for planning in England? The National Planning Policy Framework

Summary of some of the main changes to the NPPF's provisions

Getting Local Plans in place as soon as possible

Local planning authorities (LPAs) are strongly encouraged to prepare a Local Plan which sets planning policies in a local authority area, but some have not done so. Where there is no Local Plan, LPAs will often become liable to the “presumption in favour of sustainable development”. An up-to-date adopted Local Plan and/or 5-year housing supply is therefore important for LPAs wishing to control where development should go.

The Housing Secretary has powers to intervene in the local planning process, set out in a [PQ response in September 2017](#). In the Housing White Paper [Fixing our broken housing market](#) in February 2017, the Government said it would use its intervention powers to ensure that Local Plans were put in place and set out the criteria for intervention, which might entail writing the plan for the LPA.

In November 2017, Sajid Javid [wrote to 15 LPAs](#), setting out his intention to intervene. In his [speech to the planning conference](#) in March 2018, he reiterated his frustration with those LPAs “lagging behind” and leaving themselves open to speculative development. In a [written statement in March 2018](#), he set out the varying degrees of progress made and how he intended to act in the three – Castle Point, Thanet and Wirral – where he considered there had been “consistent failure and lack of progress”. It was [reported in May 2018](#) that a recommendation from MHCLG’s chief planner on intervention in those three authorities was to be put to Ministers the following month. There has been no further announcement of whether and how the Secretary of State intends to use his intervention powers in those three LPAs. [Ministers’ most recent statement](#) on the use of intervention powers came in June 2018, when the then planning minister, Dominic Raab, said that MHCLG would intervene when necessary to protect communities against unplanned growth.

More generally, the updated NPPF aims to improve and update the plan-making process. The [consultation proposals document](#) listed the changes relating to plan-making that were being brought about as a result of the *Neighbourhood Planning Act 2017*. Other changes derived from the 2017 consultation [Planning for the right homes in the right places](#).

The [NPPF 2019](#) now sets out how plans should be prepared and how their soundness will be determined.

Presumption in favour of sustainable development

The presumption in favour of sustainable development was [introduced by the NPPF 2012](#), which described the presumption as a “golden thread”.

The [consultation document](#) outlined how and why the wording of the presumption in favour of sustainable development had been amended and the [draft revised NPPF](#) set out the presumption in its revised form. The specialist publication *Planning* [described the changes as “small but significant”](#).

The [Government response to the consultation](#) remarked that there had been “widely diverging views” on the presumption in favour of sustainable development and so minor changes to the wording had been made. The [NPPF 2019](#) therefore offers an amended definition of the presumption in favour of sustainable development.

Neighbourhood Plans and the presumption in favour of sustainable development

[The Planning Practice Guidance \(PPG\) on neighbourhood planning](#) says that there is no need to review or update Neighbourhood Plans but, if they conflict with more recent policies in a Local Plan, it is those more recent plans which take precedence. While a Neighbourhood Plan is a formal development plan document, its weight when taking planning decisions is often challenged if it relates to an area where the LPA cannot demonstrate its five-year supply of housing.

Paragraph 14 and footnote 9 of the [draft revised NPPF](#) sought to incorporate the former housing minister [Gavin Barwell's written statement in December 2016](#) on the circumstances in which a Neighbourhood Plan could be relied on when considering planning applications which might otherwise fall within the presumption in favour of sustainable development. The draft revised NPPF was, though, [criticised by the Campaign to Protect Rural England \(CPRE\)](#) for (in their view) implying that Neighbourhood Plans would have to be revised every two years.

In the [Government response to the NPPF consultation](#), MHCLG rejected the suggestion from neighbourhood planning bodies that Neighbourhood Plans should be considered up-to-date for five years rather than two. The [NPPF 2019](#) has been reworded to remove the reference to referendums.

Standard method for calculating housing need

The Government has not until fairly recently wanted to lay down in detail the method of calculating housing need, but in his [speech in July 2017 to the Local Government Association conference](#), Sajid Javid argued that some councils had failed to be honest about the level of housing need in their area.

MHCLG therefore launched the consultation [Planning for the right homes in the right places](#) in September 2017. With it, MHCLG published the [housing need consultation data table](#), which – using data from the Office for National Statistics (ONS), Natural England and LPAs’ publicly available documents – presented MHCLG’s indicative assessment (according to their proposed method) of the housing need for each LPA, alongside those authorities’ own estimates and the numbers within their adopted Local Plans. In its [response to that consultation](#) in March 2018, MHCLG observed that, although the proposed standard method had won only qualified support, it considered its method the most appropriate one and intended to go ahead with it.

[Announcing the consultation](#) on the draft revised NPPF in March 2018, Sajid Javid confirmed that MHCLG intended to introduce the standard method. In the [Government response to the](#)

[NPPF consultation](#), MHCLG indicated that it would amend planning guidance to clarify (amongst other things) the circumstances in which the standard method might necessitate an early review of plans.

In September 2018, ONS released the 2016-based household projections, which were revised downwards. The Commons Library *Insight* piece on [Housing targets: Can we predict future need?](#) examines how these latest household projections might affect the standard method and the assessment of housing need.

The [technical consultation on updates to national planning policy and guidance](#) was published in October 2018. In it, the Government argued that lower household projections did not mean fewer homes were needed and there should be changes to the standard method “to ensure consistency with the objective of building more homes”. The [Government response to the technical consultation](#) in February 2019 argued that, although more than half the respondents to the consultation had disagreed with the proposal that the demographic baseline for the standard method should be the 2014-based household projections, this was “the most appropriate approach for providing stability and certainty to the planning system in the short-term”. The formula would (it said) be reviewed. The more recent projections should not (the Government went on) be used as a justification for lower housing need.

[The NPPF 2019](#) speaks of delivering a sufficient supply of homes, saying at paragraph 60 that the standard method should be used “unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals.” The [PPG on housing need assessment](#) was updated again in February 2019, setting out why the baseline for the standard method is the 2014-based household projections. It says that plans not based on the standard method will be scrutinised more closely at examination and any method relying on the 2016 household projections will not be considered to be consistent with paragraph 60.

Timescales for development

One issue which has long prompted controversy is the gulf between planning permissions granted and homes built (the “build-out” rate) and delays in starting work on development.

Dominic Raab [reiterated in March 2018](#) that the Government wanted to see more homes built more quickly. The [Government response to the Planning for the right homes in the right places consultation](#) highlighted local authorities’ concerns about build-out.

Sir Oliver Letwin MP is chairing an [independent review of build-out](#). The [consultation proposals document](#) said that some other of its proposals for improving the supply of homes would depend on the outcome of the Letwin review.

[Sir Oliver’s draft analysis](#) was published in June 2018. Amongst its “fundamental explanations”, he said that the absorption rate (that is, the speed at which homes can be sold into local markets without reducing their value) and the homogeneity of the housing built on sites were driving the slow rate of build-out. He suggested too that, to reduce reliance on large sites, the planning system might do more to encourage the use of smaller sites, in tandem with increasing the rate of build-out on large sites.

The [draft revised NPPF](#) proposed to insert a new paragraph into the NPPF, suggesting that LPAs should consider imposing planning conditions that development should begin within a timescale shorter than the statutory default time limit (currently 3 years for a full planning permission; local authorities can already vary the time limit but must have good planning

reasons to do so). The draft revised NPPF proposed to make clear that housing development would be considered an area where the usual timescales could be varied.

The [NPPF 2019's](#) provisions are similar to those outlined in its draft revised form, with some adjustment to the description of "major development" and specifying that, where the LPA assesses why a similar development granted planning permission has not started, this should be for a development on the same site.

Five-year land supply agreed for a year

In March 2017, the [then housing minister, Gavin Barwell, confirmed](#) that the Government wanted to offer greater certainty by enabling housing land supply to be agreed with the Planning Inspectorate and then fixed for a year.

The [consultation proposals document](#) summed up the circumstances in which the 5-year housing land supply could be agreed for a year and the [draft revised NPPF](#) set out the detail. The [NPPF 2019](#) repeats the wording of the draft revised version and [defines an annual position statement](#).

Green Belt and brownfield land in the Green Belt

In a statement in September 2017 on local housing need, [Sajid Javid reiterated the Government's stance](#) on the Green Belt.

As the [Commons Library briefing on the Green Belt](#) explains in more detail, the 2010 Natural England and CPRE report, [Green Belts: A greener future](#), concluded that Green Belt policy was "highly effective" in its principal purpose, but called for "more ambition" to further enhance the green belt protection for future generations. The Communities and Local Government Committee published a [report on the operation of the NPPF](#) in December 2014, concluding that local authorities should be encouraged to review their Green Belts.

The Government argues that building on brownfield land in the Green Belt does not undermine the Green Belt. In December 2015, [DCLG consulted on a proposal](#) to amend Green Belt policy to allow (amongst other things) starter homes to be built on some brownfield sites in the Green Belt. In its [summary of the consultation responses](#), DCLG noted that there was broad support for strengthening policy on development on brownfield land, but some respondents had voiced concerns about unintended consequences.

The [NPPF consultation proposals document](#) set out how the proposals would be broadened and taken forward. The [Government response to the consultation](#) highlighted the diversity of views expressed about the proposals relating to the Green Belt and brownfield land in the Green Belt and noted that there had been mixed responses on making greater use of brownfield land in the Green Belt. The Government would (it said) amend the NPPF to incorporate the suggested changes but would not review national Green Belt policy and would not ban all development in the Green Belt.

The [NPPF 2019](#) thus reiterates Government policy and encourages the use of brownfield land in almost the same terms as the draft revised NPPF. On protecting the Green Belt, it urges LPAs to maximise the use of suitable brownfield sites before considering changes to Green Belt boundaries.

Environmental gain

In his [speech at the planning conference](#) on the day the NPPF consultation was launched, Sajid Javid said that the new approach to planning would safeguard assets and promote net gains for biodiversity.

Broadly speaking, previous guidance and advice recommended avoiding damage or harm and then, if damage or harm is unavoidable, mitigating it. Under *achieving sustainable development*, [NPPF 2012](#) spoke of achieving net gains for nature. It set out too how impacts on biodiversity should be minimised.

Under *achieving sustainable development*, the [draft revised NPPF](#) talked of taking opportunities to secure net gains against three objectives, including an environmental one.

The [Government response to the consultation](#) remarked that many correspondents had suggested that the term “net environmental gain” needed clarification. Paragraph 8 of the [NPPF 2019](#) sets out the environmental objective (with minor changes to its wording).

Local wildlife sites

One area of controversy was the omission from the [draft revised NPPF](#) of local wildlife sites, which were not mentioned by name in it (but were mentioned in the 2012 version).

The draft revised NPPF identified in a footnote those policies which might provide a clear reason for refusal of planning permission in circumstances where, otherwise, the presumption in favour of sustainable development would apply. The policies did not include those relating to local wildlife sites. In [PQs in May 2018](#), the Minister said that MHCLG wanted to provide “clarity around these essential protections”.

The [Government response to the consultation](#) said that, although local wildlife sites had been the most commonly proposed addition to the footnote, the Government did not consider them equivalent to the other policies listed there and so they had not been added. The Government did, though, agree that locally designated wildlife sites should be mentioned in the policies relating to biodiversity. The [Glossary to the 2018 NPPF](#) thus includes local wildlife sites amongst sites important for biodiversity.

Protecting ancient woodland

There is no specific law protecting ancient woodland from development, but the [NPPF 2012](#) set out how the planning system should contribute to [conserving and enhancing the natural environment](#). Planning permission should (it said) be refused for development that would entail the loss of ancient woodland or the loss of aged or veteran trees unless the need for the development or its benefits outweigh the loss.

The more detailed guidance in the [PPG on the natural environment](#) points out that one of the core principles in planning is to recognise the intrinsic character and beauty of the countryside.

In February 2017, the [Housing White Paper](#) announced planning policy changes. Under *making enough land available in the right places*, it set out how the Government intended to add ancient woodland and aged or veteran trees to a new list of policies restricting development, thus making giving their protection more prominence.

Defra published its 25 year plan, [A Green Future: Our 25 Year Plan to Improve the Environment](#) in January 2018. The Plan too stated that the Government was committed to stronger protection of ancient woodlands through their sustainable management to provide social, environmental and economic benefits.

The [consultation proposals document](#) confirmed that ancient woodland and aged or veteran trees would become part of a defined list of policies to limit development. One of the principles of the [NPPF 2019](#) is that development resulting in the loss or deterioration of irreplaceable habitats should be refused unless there are “wholly exceptional reasons”.

Oil and gas exploration

Although certain preparatory work may be done under permitted development, most other operations will require planning permission. The Commons Library briefing [Shale Gas and Fracking](#) discusses planning permission.

The [Conservative manifesto for the 2017 general election](#) promised a change to relevant planning law. In a [Written Ministerial Statement \(WMS\) in May 2018 on energy policy](#), the Business Secretary, Greg Clark, also said that the Government wanted 'timely' decisions on planning and at least some of these changes would be introduced through revised guidance.

[Permitted development rights](#) (PDRs) are rights deriving from a general planning permission granted by Parliament, rather than the LPA. Since April 2016, PDRs have covered the drilling of boreholes for the purposes of carrying out groundwater monitoring, seismic monitoring or locating and appraising the condition of mines, where this is preparatory to potential petroleum exploration. This work can be carried out to establish baseline information on the groundwater environment without the need for planning permission, although other regulatory consents, such as a PEDL (Petroleum Exploration and Development Licence) would still be required.

The May 2018 WMS committed to a consultation on the principle of whether non-hydraulic fracturing shale exploration development should be treated as permitted development, and in particular on the circumstances in which this might be appropriate. A [consultation on permitted development for shale gas exploration](#) ran from July to October 2018. The consultation document invited views on creating a PDR for non-hydraulic shale gas exploration development in England (which would not apply to the appraisal and production operations of shale gas extraction). Responses to the consultation are still being analysed.

The May 2018 WMS also committed to consulting, in summer 2018, on the criteria required to trigger the inclusion of shale production projects into the Nationally Significant Infrastructure Projects (NSIP) regime. The Department for Business, Energy and Industrial Strategy (BEIS) [launched the consultation](#) in July 2018. In the consultation document, BEIS set out its arguments for including shale production projects in the NSIP regime. This consultation also closed in October 2018 and the [responses to it](#) are still being analysed.

Chapter 17 of the [draft revised NPPF](#) dealt with facilitating the sustainable use of minerals. On oil, gas and coal exploration and extraction and maintaining supply, it said that mineral planning authorities should "recognise the benefits of ... unconventional hydrocarbons" and when determining planning applications should ensure the integrity and safety of underground exploration, extraction and storage. The [consultation proposals document](#) provided commentary on the proposed changes to the NPPF, pointing out that changes to paragraph 204 were intended to build on the [WMS of 16 September 2015](#) setting out shale gas and oil policy.

The [Government response to the NPPF consultation](#) observed, though, that there had been disagreement with the proposed changes concerning oil and gas development and fracking. Similarly, many respondents had disagreed with the question about removing guidance on minerals from the NPPF as this, they feared, would encourage fracking. The Government also set out how the updated NPPF would deal with minerals and reiterated that – although there had been limited support for the inclusion of unconventional hydrocarbons, including shale, in the NPPF – shale gas was (in its view) of national importance. The [updated NPPF](#) therefore sets out the amended policies.

It was [reported in September 2018](#) that Friends of the Earth were bringing a legal case, seeking to have the updated NPPF struck down because of the lack of a strategic environmental

assessment of its provisions relating to oil and gas exploration. In March 2019, [the High Court found](#) that the guidance within the NPPF 2019 was unlawful, that the Government had failed to consider the latest scientific evidence and had failed to carry out a lawful public consultation.

Developer contributions

Section 106 of the [Town and Country Planning Act 1990](#) provides for planning obligations or agreements with a developer – also termed “affordable housing levies” – to mitigate the effects of a planning application which would otherwise be unacceptable. They may not be used to fund the same infrastructure projects as the Community Infrastructure Levy, which is a broader locally-based development tax.

In March 2018, MHCLG launched a [consultation on supporting housing delivery through developer contributions](#). This set out the perceived shortcomings of the current system, including delay in negotiating and renegotiating section 106 planning obligations and lack of transparency. The consultation document went on to set out the Government’s objectives for reform, centred on reducing complexity and increasing certainty; supporting swifter development; increasing market responsiveness; improving transparency and allowing local authorities to introduce a Strategic Infrastructure Tariff to help fund or mitigate strategic infrastructure. One area for change would be the restriction on pooling section 106 planning obligations which, to create some flexibility, would be lifted in certain circumstances. The responses to this consultation are [still being analysed](#).

An [article in the specialist publication *Planning*](#) outlined several planning professionals’ views of the proposals, particularly those on lifting the restriction on pooling developer contributions and setting the rate.

In [its response to the NPPF consultation](#), the Government observed that contradictory arguments had been put forward for how land value for developer contributions should be measured and whether market value should be used. The Government wanted (it said) to ensure greater transparency on developer contributions and viability and would keep the guidance under review.

The [NPPF 2019](#) therefore restates the Government’s intention that “plans should set out policy requirements for contributions from developers towards infrastructure and affordable housing, and that those policies should not undermine the deliverability of the plan”.

Viability assessments

When seeking planning permission for developments including residential uses, developers will routinely submit viability assessments. These assessments provide a raft of commercial data to an LPA, which ultimately goes to the deliverability of a scheme.

Questions of viability tend to raise most often in the context of requirements for affordable housing.

It has often been argued – although developers contest this – that developers use arguments about viability to backtrack from commitments to build affordable housing as part of a development. It has also been argued that the introduction in 2013 of regulations which allowed for the modification and discharge of planning obligations has encouraged developers and landowners to seek to renegotiate planning obligations, often citing financial viability as a reason for that renegotiation. Thus (it has been argued) the balance of power in this process has shifted towards developers.

MHCLG launched a consultation on [planning for the right homes in the right places](#) in September 2017. In the [consultation paper](#), MHCLG argued that making viability assessments simpler, quicker and more transparent could lead to better use of section 106 agreements. The paper therefore proposed that, where policy requirements had been tested for their viability, they should not normally be rehearsed again at the planning application stage; in that way, any consideration of viability would normally be addressed early, at the plan-making stage.

The [NPPF consultation proposals document](#) set out how the draft revised NPPF would change the policy on viability assessments, so that viability assessments would be publicly available and (MHCLG argued) there would be less scope for delay caused by negotiating developer contributions. The amended policies were set out in the [draft text for consultation](#). The [draft PPG](#) published with the draft revised NPPF expanded on MHCLG's proposed new approach to assessing viability and argued that it should not be necessary at the decision-making stage.

The [Government response to the consultation](#) observed that there was support from all stakeholder groups for the proposed changes to viability assessment around transparency, accountability, complexity and delays, although there were also some concerns about frontloading onto the plan-making stage and (respondents said) there might still be a need to reassess viability at the decision-making stage.

Under *planning conditions and obligations*, the [NPPF 2019](#) says that planning applications which comply with policies setting out the contributions expected from development should be assumed to be viable.

Responding to the updated NPPF, the [Local Government Association welcomed the moves](#) to solve difficulties in assessing viability for affordable homes but said that the new powers fell short of what local authorities needed. In [Property Week](#) magazine, commercial property consultants Lambert Smith Hampton expressed concern that the new viability regime might hinder the delivery of new homes, suggesting that instant implementation might be a "difficult pill to swallow".

Increasing density

The Government's position (broadly speaking) is that, to ensure that enough new homes are built to meet need, best use must be made of land and housing should not therefore be built at low density.

When [announcing the NPPF consultation](#) in March 2018, Sajid Javid argued that the revised NPPF would enable the delivery of the right homes in the right places, tackle the housing crisis and improve the prospects of people and of the country. One way to achieve this (he said) would be to increase density. Similarly, in April 2018, [Dominic Raab said](#) that minimum density standards were one option for LPAs to make effective use of land.

The [draft revised NPPF](#) set out how LPAs should use minimum density standards to ensure that homes are not built at low densities. The [Government response to the consultation](#) observed that – although there was broad support for making efficient use of land – there had been no great enthusiasm for minimum density standards.

The [NPPF 2019](#) now offers guidance on achieving what it terms "appropriate densities", with the use of minimum density standards for city and town centres and other areas well-served by public transport and other parts of the plan area, as appropriate. More generally, the NPPF advocates efficient use of land.

New permitted development to extend upwards

Certain (but not all) home extensions fall within the scope of PDRs; those falling outside scope require planning permission. The Government's Planning Portal provides information about [PDRs as they relate to house extensions](#): conditions here do not permit the roof to be raised.

The Government consultation in early 2017 on [Fixing our broken housing market](#) suggested that extending building upwards (using the "airspace" above them) might create scope for higher density housing in urban locations. A [written statement from Sajid Javid in February 2018](#) reiterated Government policy towards extending upwards.

The [NPPF consultation proposals document](#) mentioned permitted development to extend upwards as one of its proposals for improving the supply of homes, although this would depend on the outcome of the Letwin review. The [Government response to the consultation](#) remarked that there was broad support for its emphasis on extending upwards, although respondents had voiced some concerns about infrastructure issues such as car parking and recycling points.

Under *making effective use of land*, the [NPPF 2019](#) now says that planning policies and decisions should support opportunities to use the airspace above existing buildings, by allowing upward extensions "where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well-designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers".

In October 2018, MHCLG [launched a consultation](#) aimed (it said) at supporting the high street by (amongst other things) increasing PDRs. One of the changes proposed there was to allow certain types of building to be extended upwards, which would (it argued) enable the creation of "much needed additional new homes which fit within the existing streetscape and can enhance the local area". In its [response to this consultation](#), the Royal Town Planning Institute argued against such a PDR, identifying a number of potential drawbacks, including poorly-designed dwellings and impact on streetscape.

In a [Written Statement in March 2019](#), James Brokenshire confirmed that the proposed PDR would be taken forward. He said too that the right to deliver new homes should respect the design of the existing streetscape and consider the amenity of neighbours; there would be consultation in 2019 on a "future homes standard", with a view to introducing it by 2025. On implementation, he said that upward extensions would be covered in a further package of regulations in the autumn.

The [Government response to the October 2018 consultation](#) was published in May 2019. It observed that more than half of respondents had not supported a PDR for upward extensions and (although there had been some support) various concerns had been expressed.

Bringing forward agricultural land

The [NPPF 2012](#) encouraged LPAs to take account of the economic benefits of the best and most versatile agricultural land.

In his [speech to the planning conference](#) coinciding with the launch of the consultation, Sajid Javid said that one element of the updated approach to planning would be "finding more effective ways of bringing agricultural land forward for housing".

The [consultation document](#) also mentioned the bringing forward of agricultural land for development as a means of improving the supply of homes, although this too would depend on

the outcome of the Letwin review. Under *Conserving and enhancing the natural environment*, the [draft revised NPPF](#) said, much like the 2012 version, that the land allocated should be that with the least environmental or amenity value and areas of poorer quality agricultural land should be preferred. The [NPPF 2019](#) follows the line of the draft revised version.

Swifter planning inquiries

The Commons Library briefing [Planning appeals](#) describes the current system.

Another element of the revised approach to planning which Sajid Javid announced in his [speech to the planning conference](#) was “ensuring that swift and fair decisions are made at appeal.” A review aimed at halving the time taken to determine planning inquiries (not the generality of appeals) would, he said, be announced shortly.

The [independent review was chaired by Bridget Rosewell](#), who set out the problems – particularly, the “harmful consequences of unnecessary delays” for major housing developments – that the inquiry sought to address. The [call for evidence](#) was published in July 2018 and closed in September 2018.

The final [report was submitted](#) to the Secretary of State in December 2018 and published in February 2019. Its [executive summary](#) summed up the review’s conclusions about the scope and need for reform and set out what the recommendations would entail. The review did not, though, recommend “wholesale changes”, as those might be “counterproductive”. These reforms would (the executive summary said) reduce overall times from receipt to decisions for cases decided by the Inspector to between 24 and 26 weeks, from a current average time of 47 weeks.

In the [accompanying press release](#), James Brokenshire argued that speeding up inquiries could ensure the delivery of homes to meet the Government’s target of 300,000 new homes a year by the mid-2020s.