

Commentary on draft National Planning Policy Framework

Introduction and overview

The structural changes are considered an improvement to the usability and coherence of the document. Increasing housing land supply and the delivery of new homes are at the forefront of the Government's agenda and the re-ordering of the document reflects this. The introduction of the Housing Delivery Test and the ability to grant planning permissions with shorter time limit conditions places a greater focus on housing completions with accountability to the local plan although limited accountability would be with the house building industry itself.

There is greater emphasis on efficient and optimal use of land, in particular on brownfield sites within the urban area. The role of small sites is promoted as well as pursuing high-density housing in accessible locations, while reflecting the character and infrastructure capacity.

There is continued strong protection for the Green Belt but clarification of the exceptional circumstances to which release may occur. This primarily relates to responding to housing need. Alongside there is a strengthening of protection for ancient woodland and other irreplaceable habitats. Within both plan and decision making there will need to be a careful balancing of these potential competing priorities.

The Government has been clear that it is not seek views on proposals they have previously consulted on. To this end, they have published their response to the Planning for the Right Homes in the Right Places consultation. This current consultation proposal provides a chapter-by-chapter summary of the proposed revisions to the NPPF and consultation questions are asked throughout. Attached in Annexe 2 is the proposed responses to the consultation questions, they seek not duplicate the comments already made to the previous consultations. A synopsis of the key changes along with officer commentary has been provided below.

Plan-making

The importance of having a plan-led system has been emphasised, with some additional requirements imposed. Planning authorities are required, as a minimum, to have adopted a plan which addresses the strategic priorities for their area (Chapter 2, paragraph 17). The policies which are considered 'strategic' have to be made explicit in the Plan, and should look ahead over a minimum 15 year period. Strategic policies should be reviewed at least once every five years, and updated as necessary (Chapter 3, paragraph 21-23).

Statements of common ground

Authorities will be required to prepare and maintain statements of common ground, which document cooperation and joint working between them to address cross-border planning issues, and how development needs that cannot be met within a particular area could be met elsewhere (Chapter 3, paragraph 29). Guidance of the form and content of statements of common ground is expected to be issued shortly.

As a *minimum* seek to meet development needs and more

A standard methodology for calculating local housing need will be introduced and should be used "unless there are exceptional circumstances that justify an alternative approach". Clarity on what would determine *exceptional circumstance* has

Commentary on draft National Planning Policy Framework

not been provided, although it should be noted that the housing need figure of the Draft London Plan is based on an assessment that deviates from the proposed standard methodology. As Epsom & Ewell is continuous with and cannot be disentangled from greater London, it could be considered sound and reasonable to follow suit. Further details relating to the standard methodology are expected to be published within the Planning Policy Guidance (PPG).

Although there remains the requirement for local planning authorities to identify the size, type and tenure of homes for different groups of the community. There is concern as to the soundness of an approach that will require the disaggregation of the standard methodology figure derived from a simple formula to identify the qualitative housing needs.

The draft revisions seek that, as a **minimum**, *strategic* and *local* plans should provide for an area's housing and other development needs, as well as any that cannot be met within neighbouring area, where it is practical to do so and is consistent with achieving sustainable development. This would be established through a requirement to produce Statements of Common Ground between neighbouring councils. These will be prepared and maintained as evidence (where appropriate) of the statutory duty to co-operate in order to meet the test of soundness.

This appears to acknowledge that there is likely to be areas where there is unmet housing need but this would then conflict with first requirement for plans to meet all identified needs, as a minimum.

Similarly, paragraph 11(b) advises that plans should provide for development need unless "the application of policies in this framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area". A defined list (replacing examples) of policies which provide a specific reason for restricting development are set out in footnote 7, this now includes Ancient Woodland and aged or veteran trees.

To meet the draft revised tests of soundness, plans should form "an appropriate strategy", compared with the current requirement for them to constitute "the most appropriate strategy" for the area. This avoids the need to demonstrate that a strategy is optimal. Strategies and policies are to be based on proportionate, relevant and up to date evidence, focused tightly on supporting and justifying the policies concerned that take account of relevant market signals.

It is disappointing that there is a continued conflation between the assessed development needs, in particular the housing need figure with constituting a housing target. Repeatedly, the needs figure is referred to as the *minimum* a plan should seek to deliver.

A new kind of affordable housing

The draft revisions advise that 'where the need for affordable housing is identified, planning policies should specify the type of affordable housing needs, and except it to be met on site'.

Commentary on draft National Planning Policy Framework

It is proposed that the definition of affordable housing is significantly changed. The proposals remove the differentiation between affordable and social rent and introduces starter homes and discounted market sales housing as well as setting out other affordable routes to home ownership. There is limited detail relating to these products and further clarification is required.

The amended definition of affordable housing reflects the Government's focus on delivering affordable home ownership products rather than support for the rental market. Indeed the draft revisions sets a requirement for at least 10% of homes on major housing site (10 or more homes) to be available for affordable home ownership.

In contrast, the Borough Council's evidence (SHMA 2016) shows an acute need for affordable rental homes in the Borough and outlines the affordable needs of our residents by type. The primary requirement is for social rented (94%) followed by affordable rent (6%), there is no requirement for intermediate products which would be akin to the Government's proposed affordable home ownership offer. There is a real risk that a continued focus on affordable home ownership, a product preferred by developers would severely limit the Borough Council's ability to deliver the type of homes in greatest need.

To date the Borough Council has continued to pursue its current adopted Core Strategy Policy CS9 Affordable Housing that requires contributions from proposals of five or more dwellings. The justification and evidence of the continued application of the policy was set out in the Borough Council's Statement on the Exceptional of Small Sites from Development Contributions (Affordable Housing) (December 2017).

Disappointingly, the draft revisions preclude local authorities from applying affordable housing policies to small sites (less than 10 units or 1,000sqm floor space). The proposed wording does not appear to allow any flexibility to reflect local circumstances and, as such, the current policy requirements of CS9 would conflict with the proposed national policy. The proposed revision will constrain affordable housing delivery in the immediate future.

Promoting sustainable transport

The draft revisions do not propose any significant changes in relation to transport but it does highlight the need for transport planning to be considered early in the plan and decision making process. Specifically, there is more emphasis importance of sustainable modes of transport, which is welcomed. However, in contrast paragraph 107 states that maximum parking standards should not be applied as a matter of course unless there is a clear and compelling justification. This would imply that minimum standards should be sought be default.

It is disappointing the draft revisions fail to include a definition of 'severe' residual cumulative impact on the road network or road safety.

Identifying land for homes and making effective use of land

The draft revisions require that policies should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability. In addition there would be a requirement for at least 20% of the sites identified for

Commentary on draft National Planning Policy Framework

housing to be on small sites of half an hectare or less. This makes a bold assumption that this quantity of small sites are available in the Borough and will be continue to be in the future.

The draft revisions introduces a new chapter titled 'making effective use of land'. This chapter combines existing policy with a number of proposal from the Housing White Paper. Local Plans should include a 'clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or brownfield land'. Policies and decisions should seek to make more intensive use of existing land and buildings with substantial weight is to be given to the use of brownfield land within urban areas.

The proposals would require planning policies and decisions to avoid homes being built at low densities and ensure that development makes optimal use of the potential of each site'. Paragraph 123c proposes that local planning authorities should refuse applications which fail to make effective use of land, in areas where there is an existing or anticipated shortage of land for meeting identified housing needs.

The draft revisions introduces the expectation of minimum densities policies, particularly in town and city centres and locations with good public transport accessibility in areas where there is a shortage of land for meeting identified housing needs.

The weight given to brownfield land and the concept of optimising densities is welcomed in principle. However, a narrow focus on increasingly higher densities (and thus the delivery of smaller units) will fail to provide for the varying types of homes required. Indeed the SHMA 2016 identified that within Epsom & Ewell 47% of the homes needed should be 3 or more bedrooms.

Furthermore, it is vital that development representing an effective use of land including high-density proposal are of a high quality design that adds to the distinctive character of the Borough. Unfortunately, from experience many of the high-density schemes currently proposed in the Borough by the industry often fail to inspire.

The draft revisions (Chapter 12, paragraphs 124-130) would offer an opportunity for the Borough Council to provide more detailed design guidelines, setting out a local derived clear design vision and expectations, which could be supported by visual tools such as design guides and codes. This is a contrast to the previous stance, which sought to avoid unnecessary prescription. Officers are already exploring different development typologies to assist in identifying what *optimal* developments could look like in Epsom & Ewell.

The draft revisions implement the Housing White Paper proposal that design should not be used as a reason to object to development where the scheme complies with local policies. It also places additional emphasis on the importance of pre-application discussions in securing good design

The current ability and willingness of house builders to deliver *optimal* development is uncertain. Our evidence of current market signals from site promoters, house

Commentary on draft National Planning Policy Framework

builders and developers with interest in the Borough indicates that the appetite for higher density schemes is not shared by all.

The draft revisions also propose a flexible approach to policies or guidance that could inhibit making effective use of a site and specifically refers to daylight and sunlight issues. This could be interpreted as a downgrading of the importance of the residential amenity of existing occupants when weighed against the benefits of delivering new homes.

The draft revisions seek to make it easier to convert and reallocate retail and employment land for housing, where there is high housing demand and providing it does not 'undermine key economic sectors or the vitality and viability of town centres'.

To date, the Borough Council has proactively sought to protect and retain its employment land reflecting its valuable contribution to the local economy and sustainable place making. In essence, the proposals would result in less protection for undesignated employment land; a reflection of the Government's dominant housing agenda.

Vitality of town centres

There is a minor change to the sequential approach to town centre development, whereby suitable sites in a town centre or edge-of-centre includes not just those sites which are 'available' but also those 'expected to become available within a reasonable period' (Chapter 7, paragraph 87).

Protecting Green Belt Land and establishing a need for changes

The draft revisions seek continued strong protection for the Green Belt and provide clarification of the circumstances in which release may occur. Specifically, paragraphs 136-137 implement the Housing White Paper proposals that certain criteria should be satisfied before 'exceptional circumstances' are used to change Green Belt boundaries.

There would be a requirement to fully examine "all reasonable options" for meeting identified development needs before releasing Green Belt. This will be assessed through the examination of the plan, considering whether the proposed strategy;

- a) Makes as much use as possible of suitable brownfield sites and underutilised land;
- b) Optimising the density of development, including whether policies promote a significant uplift in minimum density standards in town and city centres, and other locations well served by public transport; and
- c) Has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development as demonstrated through the statement of common ground.

Where Green Belt is released first consideration should be given to land which has been previously-developed or which is well served by public transport. Plans should also set out ways in which the impact of removing land from the Green Belt can be

Commentary on draft National Planning Policy Framework

offset through compensatory improvements to the environmental quality and accessibility of remaining Green Belt land.

For decision-taking the general presumption against inappropriate development remains unchanged. The list of limited exceptions for development that is considered appropriate in the Green Belt is also largely unchanged other than it now also includes facilities for burial grounds and allotments as long as they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it; and in the case of affordable housing on previously-developed land, would not cause substantial harm to the openness of the Green Belt (Chapter 13, paragraph 144).

Maintaining and ensuring land supply and the delivery of homes

Housing delivery is a high priority for the Government. The draft revisions would allow the Borough Council to consider imposing planning conditions requiring development to be brought forward within two years, unless this could hinder viability or deliverability. It also encourages consideration of why major sites have not been built out when considering subsequent planning applications. This is a significant softening of the Government previous proposal that a developer's 'track record' should be considered when deciding whether to grant planning permission.

When granting planning permission the draft revisions seek to restrict the use of 'unnecessary' planning conditions, introducing a requirement that all pre-commencement conditions to be agreed in writing with the applicant (Chapter 4, paragraph 56). Whilst this may speed up implementation of a permission, it may present challenges to achieving timely decisions.

It should be noted that the revised text warns against opposing national policies through imposition of local planning controls unless there are good arguments for such action. The use of Article 4 directions should be limited to situations where it is necessary to protect local amenity or the wellbeing of the area. Planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so (Chapter 4, paragraph 54).

Local Planning Authorities continue to be required to demonstrate a five-year supply of deliverable sites through a recently adopted plan or an annual position statement. As per the current NPPF, failure to demonstrate a five-year housing supply triggers the presumption in favour of sustainable development. The draft revisions propose a mechanism to allow the five-year land supply position to be agreed for a one-year period, subject to a 10% buffer 'to account for any fluctuations in the market during that year'.

It is intended that the implications of the Housing Delivery Test (HDT) will follow one day after the publication of the results, expected in November 2018. Based on the proposed HDT calculation as outlined in the Draft Measurement Rule Book, Officers have estimated that delivery of housing in Epsom & Ewell would be classified as 'substantial under-delivery'.

The draft revisions introduces the policy consequence of the HDT (see Paragraphs 74(c), 75, 77 and Footnote 29). The results of the HDT can be a trigger for the

Commentary on draft National Planning Policy Framework

operation of the presumption favour of sustainable development. If delivery is less than 95% of the housing requirement, then an action plan will be needed, the presumption in favour applies from 2020 if delivery falls below 75%. However, the circumstances to which it will be concluded that a Council has failed to 'step up' to delivery and therefore placed into special measures including be stripped of its right to decide planning application is not included in the draft revisions.

The HDT will increase the Local Plan's accountability for delivering new homes. As a result, we will need to place a greater emphasis on ensuring that our housing sites are genuinely deliverable. Officers are already considering how they could engage with developers and landowners to gain confirmation of realistic timeframes for commencements, site capacities and build out rates.

Reviewing plans

Plan reviews will be required every five years following the date of adoption, with updates, if necessary to reflect changing circumstances. The draft revisions advise that at this stage Councils should consider reallocating land where there is no reasonable prospect of an application coming forward for the allocated use and set out how alternative uses should be considered ahead of a plan review.

Going Further

Under the heading 'Going Further' within the consultation proposals, the Government notes that in order to put England on track to deliver 300,000 new homes a year more needs to be done (beyond the package set out in the Housing White Paper and the draft revisions to the NPPF).

As a consequence, the Government is considering further planning reforms that could explore the opportunities through new permitted development to 'make sure that we are using the space we have available efficiently and reduces the need to build out'. This builds up the Written Ministerial Statement of 5 February 2018, which made clear that planning policies and decisions should allow the use of airspace above existing residential and commercial premises to create new homes.

Furthermore, as there will are locations where meeting local needs through more efficient use of urban land is not possible, there will be a need to find extra land. To this end, the Government will explore wider measures to support farm diversification and housing in the rural economy. Further consultation is expected as these proposals are developed.

A New Approach to Viability

The Government is seeking to tighten the 'viability loophole' and to that end, issues of viability should be the exception and not the norm when determining planning applications. The draft revisions propose that where policy requirements have been tested for viability at the plan making stages, such issues should not usually need to be visited again at the planning application stage. The proposals would allow the Borough Council to identify the circumstances in which viability assessments will be required in their Local Plans. It will also be within their gift to identify review mechanisms that could be used to amend developer contributions to help account for *significant* changes in costs and values. Specifically, the guidance also makes clear that overpaying for land cannot be used to justify a failure to comply with policy.

Commentary on draft National Planning Policy Framework

Where viability assessments are needed, the new guidance sets out a standardised approach and a requirement for them to be made publicly available.

Officers welcome a standardised and transparent approach, however, the guidance is much stronger than the proposed policy itself. It is considered that the proposals fail to amount to the significant reforms needed and it is unlikely they will result in an end to viability assessments or renegotiations of planning obligations.

Implementation

The consultation on the revised text of the NPPF runs until 10 May 2018, with current expectation that the final document will be published before the Parliamentary recess at the end of July 2018.

Transitional arrangements include that plans submitted for examination within six months of the final document being published will be assessed against the existing NPPF; in all other cases plans will be expected to conform to the new policy wording.

The Housing Delivery Test will apply from the date that the first data results are published, expected to be November 2018, with a phased three-year introduction where there is substantial under-delivery.

Statements of common ground will be expected to have been agreed within six months of the final NPPF being published.

Supporting House Building through Developer Contributions

Alongside the publication of the draft revisions to the NPPF, the Government has also published an additional consultation to explore the potential for further Community Infrastructure Levy (CIL) reforms. The premise is to reduce complexity, increase certainty, improve transparency and increase market responsiveness.

Interestingly the consultation propose that combined authorities and joint committees with strategic planning authority will be able to charge a Strategic Infrastructure Tariff equivalent to the London Mayoral CIL in place to fund Crossrail.

In addition, the consultation considers the potential for affordable housing and infrastructure contributions to be set nationally and to be non-negotiable. Given the wide disparity of land values across England, it is unclear how a meaningful nationally prescribed contribution tariff could be achieved.