

Planning & Transportation Policy Working Group	
Meeting Date	20 February 2023
Report Title	Levelling Up and Regeneration Bill: reforms to national planning policy (NPPF consultation)
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Classification	Open
Recommendations	1. Note the content of this report and the proposed consultation response on behalf of the Council.

1 Purpose of Report and Executive Summary

- 1.1 Members will be aware of government plans to reform the planning system. The main vehicle for this is the Levelling Up and Regeneration Bill (LURB) that is progressing through the House of Lords. The Bill had its second reading on 17 January 2023 and the line-by-line examination of the bill is scheduled to begin on 20 February.
- 1.2 On 22 December 2022, the dept for Levelling Up Housing and Communities (DLUHC) published the long-anticipated consultation on the proposed changes to the National Planning Policy Framework (NPPF). The consultation ends on 2 March 2023. The government response to the consultation responses is expected by spring 2023 and plan to publish the framework revisions as part of this “so that policy changes can take effect as soon as possible”. The proposed SBC response to the consultation on planning and the NPPF is contained in **appendix i**.
- 1.3 The purpose of this report is to set out the headlines in the NPPF consultation and to discuss the implications for Swale. This has informed the proposed responses to the set questions.
- 1.4 In summary, the proposed changes to the NPPF focus on how housing needs should be addressed and the resulting figures applied; the changes to the housing delivery test and 5 year land supply test and measures to tackle slow build-out of permissions. Energy efficiency, environmental protection and tackling climate change are also addressed as is proposed changes to plan making and how National Development Management Policies should be developed.

2 Background

- 2.1 The government sought to introduce a complete overhaul of the planning system back in August 2020 with the publication of both the White Paper: Planning for the Future in August 2020 and consultation on various proposed changes to existing policy. The government's subsequent approach was to retain the existing system and focus on amendments to existing policy and guidance that would complement and support 'Levelling Up'. The Levelling Up and Regeneration Bill (LURB) has now had its second reading in the House of Lords.
- 2.2 The [Levelling-up and Regeneration Bill: reforms to national planning policy - GOV.UK \(www.gov.uk\)](#) is not a wide-ranging review of the full NPPF. As well as seeking views on the governments proposed approach to the NPPF, the consultation also canvasses opinion on its proposed approach to preparing National Development Management Policies (NDMPs). The link usefully provides access to a version of the NPPF showing proposed amendments as tracked changes and a separate discussion paper that sets out the scope and objectives of the consultation and a number of technical questions. Respondents are encouraged to respond to the set questions that cover the changes to the NPPF text and proposals for future changes. The NPPF is but one element of national policy. Amendments to this important framework will need to be backed up by changes to other policies, guidance and legislative tools to give genuine weight in the practice of planning. The consultation discussion paper states that if the government is "*to truly remake the planning system, we also need changes to national policy and guidance, regulations and wider support for local authorities, communities and applicants*". The proposed revisions to the NPPF are required to deliver this wider change but how they can be implemented in the absence of more detail is unclear at this stage although future changes are promised for next year. There is also a proposed transitional period which also needs to be carefully considered.
- 2.3 The following is a summary of the key points made in the Levelling-up and Regeneration Bill: reforms to national planning policy, i.e. the proposed changes to the NPPF.

Policy objectives

- 2.4 The stated policy objectives of the proposals are to support the 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. There are a number of themes identified as follows:
- 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; and

- Delivering more homes in the right places, supported by sustainable and integrated infrastructure for our communities and our economy.

2.5 These themes are referred to under many of the topics and are intended as a thread running through the document. The consultation makes it clear that it is the government's intention to retain the plan-led system, which is useful to note given previous suggestions of a more generic zone-type approach and reiterated the importance of up-to-date Local Plans and Neighbourhood Plans.

2.6 A key focus of the technical detail in the consultation is around housing development, the assessment of need and how this is delivered. The detail of this is set out below.

How housing need should be assessed, and the resulting figures applied

2.7 The new household projections data based on the 2021 Census is due to be published in 2024 and the government have said it will review the implications for the Standard Method once that data is available. In the meantime, there are no proposals to amend the Standard Method through this consultation and unless "exceptional circumstances" can be justified, the use of the Standard Method should continue. More explicit indications will be given in planning guidance about the types of local characteristics which may justify a departure from the use of the Standard Method. Examples could include areas with a high percentage of elderly residents, or university towns with an above-average proportion of students.

2.8 Local Housing Need (calculated using the Standard Method) is proposed to be an advisory starting point for establishing a housing requirement rather than a minimum which is the case, currently. The government's target of building 300,000 new homes per year remains and the consultation NPPF states that the overall aim should be to meet as much housing need as possible. Paragraph 61 of the consultation retains the clause that any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for. The housing requirement may be higher than the identified housing need, if it includes provision for neighbouring areas, or reflects growth ambitions linked to economic development or infrastructure.

2.9 The requirement to provide a sufficient supply and mix of sites to accommodate housing need in a local plan remains. This includes a requirement for a minimum of 10% of the total housing need to be met on small and medium sites.

2.10 The need to avoid development that would be uncharacteristically dense can outweigh the requirement to meet local housing need. This would need to be based on the principles in local design guides and codes. Authorities would not need to review their Green Belts to meet housing needs even if this would be to the detriment of meeting the local housing needs. Swale, of course, is not a Green Belt authority but our neighbours Medway and Maidstone both have some Green Belt. Authorities to the immediate west of these neighbours are Green Belt authorities and this begs the question of what would happen to their unmet needs

given the remaining requirement to take into account “any needs that cannot be met within neighbouring areas”.

- 2.11 The Duty to Cooperate is to be replaced with as as-yet unformulated “alignment policy”. The Duty will remain in place until those provisions come into effect, and “further consideration on what should constitute the alignment policy will be undertaken”.

Changes to the housing delivery test and 5 year land supply test

- 2.12 Local planning authorities with an up-to-date local plan (i.e. less than 5 years old) will no longer need to continually show a deliverable five-year housing land supply. The proposals also include removing the need for a “buffer” to be applied to housing land supply. This is regardless of the local planning authority’s score in the Housing Delivery Test which currently penalises authorities with a score below 85% by requiring them to apply a 20% buffer to their housing requirement figures for the purposes of calculating housing land supply (rather than 5%). There would be no buffers applied to five-year housing land supply calculations.
- 2.13 Amendments to the NPPF and to national planning practice guidance would allow councils to include historic oversupply in its five-year housing land supply calculations. This will not be an issue for Swale given previous performance. Evidence of sufficient deliverable planning permissions could save local planning authorities from the most severe housing delivery test sanction, i.e. the presumption in favour of sustainable development. The consultation document proposes to add to the HDT an additional permissions-based test. This will ‘switch off’ the application of the presumption in favour of sustainable development’ as a consequence of under-delivery, where a local planning authority can show sufficient permissions for enough deliverable homes to meet their own annual housing requirement or, where lacking an up-to-date local plan, local housing need, plus an additional contingency based on the number of planning permissions that are not likely to be progressed or are revised (which the government proposes defining as 115% of the housing requirement or local housing need).
- 2.14 The government is considering suspension or amendment of the usual consequences of failure of the 2022 Housing Delivery Test. “Given our proposed changes,” the document says, “we would like to receive views on whether the test’s consequences should follow from the publication of the 2022 Test or if they should be amended, suspended until the publication of the 2023 Housing Delivery Test, or frozen to reflect the 2021 Housing Delivery Test results while work continues on our proposals to improve it”.

Measures to tackle the slow build-out of permissions

- 2.15 Past “irresponsible planning behaviour” by applicants could in future be taken into account when applications are being determined. As examples of such applicant behaviour, the document cites “persistently breaching planning controls or failing

to deliver their legal commitments to the community”. Primary legislation would be needed to enact such measures, on which the government is seeking views.

- 2.16 Government data will be published on developers of sites over a certain size who fail to build out according to their commitments. Developers will be required to explain how they propose to increase the diversity of housing tenures to maximise a development scheme’s absorption rate (which is the rate at which homes are sold or occupied). Delivery will become a material consideration in planning applications. “This could mean that applications with trajectories that propose a slow delivery rate may be refused in certain circumstances,” the document says. A financial penalty for developers that are building out too slowly will be consulted on separately.

Energy efficiency

- 2.17 Replacing old wind turbines with more powerful and efficient models will be made easier. Changes to paragraphs 155 and 158 of the existing NPPF will enable the repowering of renewable and low carbon energy schemes where planning permission is needed, and providing that the impacts of any development proposal are or can be made acceptable in planning terms, the NPPF will be amended with a new paragraph 161 to give “significant weight” to the importance of energy efficiency through adaptation of buildings. But the document says that this will be done in a way that ensures that local amenity and heritage continues to be protected.

Environmental protection and tackling climate change

- 2.18 Steps will be taken to prevent developers from gaining biodiversity net gain rules by clearing habitats before submitting planning applications. This will involve closer working with Defra to review current degradation provisions for Biodiversity Net Gain to reduce the risk of habitat clearances prior to the submission of planning applications, and before the creation of off-site biodiversity enhancements.
- 2.19 Proposals to clamp down on the use of artificial grass in new developments (by developers) is also mooted as a way for the government to consider how to halt the threat to wildlife created using this.
- 2.20 The possibility of embedding a broad form of carbon assessment in planning policy will also be explored. This will look at whether effective and proportionate ways of deploying a broad carbon assessment exist, what they should measure, what evidence could underpin them and how they could be used in a plan-making context or tool for assessing individual developments.
- 2.21 Policy and guidance in relation to the production of Strategic Flood Risk Assessments will be reviewed to encourage maximum coverage and more frequent updates.

Plan making

- 2.22 The proposals confirm the governments commitment to a plan-led system and the delivery of development needs, placing greater emphasis on beauty and placemaking. The principle of duty to cooperate remains but is no longer one of the tests against which a local plan is examined. The expectation remains that a local planning authority will consider unmet housing needs in neighbouring areas and will follow a development strategy that seeks to meet the area's objectively assessed needs so far as possible, taking into account the policies in the Framework.
- 2.23 The 'justified' test of soundness for a local plan is proposed to be removed. This test relates to the need for local plans to be 'justified', i.e. that the development strategy would be "appropriate", taking into account the reasonable alternatives, and based on proportionate evidence. On the surface, this might suggest that local planning authorities are no longer required to consider reasonable alternatives for a development strategy and for them to be assessed through the Sustainability Appraisal process. However, the legal requirement of sustainability appraisal still applies (Section 12 of The Environmental Assessment of Plans and Programmes Regulations 2004). Since local plan at examination stage must demonstrate they are legally compliant, in the absence of more detail, the requirement to satisfy the inspector that the council has considered reasonable alternatives remains.
- 2.24 Steps are being taken to maximise the amount of authorities who can make use of policy changes around plan-making intended to be introduced by NPPF revisions in the Spring, before the revised plan-making system set out in the Levelling Up Bill is introduced in late 2024. Plan-makers will have until 30 June 2025 to submit their local plans, neighbourhood plans, minerals and waste plans, and spatial development strategies for independent examination under the existing legal framework. The government is also proposing that, to be examined under existing legislation, all independent examinations of local plans, minerals and waste plans and spatial development strategies must be concluded, with plans adopted by 31 December 2026. This means that the Local Plan Review currently in progress will need to be submitted to the Secretary of State for Examination by 30 June 2025. The independent examinations of local plans must be concluded (and plans adopted) by 31 December 2026. These plans will be examined under the current legislation and will need to demonstrate the Duty to Co-operate has been met. If the deadline of 30 June 2025 for submission is missed, LPAs will not be able to continue under the transitional arrangements and will need to begin preparing a new style local plan straight away.
- 2.25 The new system will require LPAs to start work on new plans (under the new system), at the latest, 5 years after adoption of their previous plan and to adopt that plan within 30 months of starting.
- 2.26 For Swale, this means the current Local Plan Review will continue to be prepared under the current system (but under the transitional arrangements) and the *next* local plan after that will be prepared under the new system.

2.27 It will not be possible to prepare supplementary planning documents (SPDs) under the new system. Instead, these will be replaced by Supplementary Plans that will be afforded the same weight as local plans (or minerals and waste plans). Existing SPDs will remain in force for a time limited period; until the local planning authority is required to adopt a new-style plan at which point current SPDs will expire.

National Development Management Policies

2.28 There is intended to be a consultation next year on how National Development Management Policies (NDMPs) are implemented. They will cover planning considerations that apply regularly in decision-making across England or significant parts of it, the document says, such as general policies for conserving heritage assets, and preventing inappropriate development in the Green Belt and areas of high flood risk. Before any NDMP was designated by the secretary of state, there would be a public consultation.

2.29 The starting point for creating NDMPs would be existing parts of the NPPF that apply to decision-making. "However, we welcome views on whether there are other topics that should be added," the document says. Two other categories for NDMPs, in the government's "initial view", are firstly, "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", and secondly "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)". Indicative examples of 'gaps' where national policy is silent on common decision-making issues, which NDMPs would address, are: carbon reduction in new developments; allotments and housing in town centres and built-up areas.

2.30 NDMPs will cover "only matters that have a direct bearing on the determination of planning applications. Other key principles, according to the consultation, are that they would be "limited to key, nationally important issues commonly encountered in making decisions on planning applications across the country; and that they would solely address planning issues, "in other words that concern the development and use of land".

Other issues and ideas covered

2.31 As well as the main key point summarised above, there is also a number of individual issues and ideas that have been raised. These are summarised as follows:

- Local planning authorities must ensure they meet the need for retirement housing, housing-with-care and care homes;
- Greater use of planning conditions to require clear details of a scheme's design and materials;
- Encouragement of mansard roofs as an appropriate form of upwards extension (where appropriate)
- Giving higher priority in the NPPF to the provision of social rent homes

- Greater reference to the importance of ensuring outcomes support *beauty* and placemaking.

Impacts of the proposals for Swale

- 2.32 The proposed changes to the NPPF are not a significant change of direction when compared with the current version. There is some softening of the language around the use of the Standard Method in local authority areas that are constrained but is not materially different. Swale has already undertaken evidence and research over the years to look at whether there are “exceptional circumstances” to the demographics of the borough to justify a departure from the Standard Method approach to calculating housing needs. Unless the guidance is revised to explicitly identify “exceptional circumstances” it is unclear what the impact of these revisions will be and indeed whether the “exceptional circumstances” relate to the approach used to identify housing numbers or the capacity of an area to delivering housing numbers.
- 2.33 The proposals state that authorities are not required to revise their green belt boundaries to meet housing needs but under the current and transitional arrangements, the Duty to Cooperate remains and there are already failed plans in west Kent where the issue of unmet need has been the root cause. Swale, of course, is not a green belt authority but neighbouring Medway and Maidstone do have small amounts of green belt and their immediate neighbours to the west, more so. Is it unclear how unmet need would be resolved. Other constraints such as those in Swale (AONB, international and national landscape and ecological designations to name a few) are potentially more limiting to development delivery than green belt but this is not addressed in the proposals.
- 2.34 Additionally, much of what is proposed could be considered good practice and this has already been embraced by the Council. This includes a renewed vigour for beauty and raising design and placemaking standards across Swale and ensuring planning conditions regarding design and material are clear. Setting this out in the NPPF will further strengthen the Council’s ability to deliver this when negotiating proposals through the development management process and local plan policies.
- 2.35 Proposals to remove the requirement for a ‘buffer’ in calculating housing delivery is welcomed. The Housing Delivery Test was introduced as a mechanism to measure performance against delivery target. Where local plans in preparation have achieved certain formal stages, local planning authorities could be required to demonstrate a four year housing land supply (rather than five years). This is a welcome approach that recognises plan preparation progress.

3 Proposals

- 3.1 This report seeks to provide a summary of the key proposals in the consultation version of this NPPF and what the implications of these are for Swale. Draft responses to the set questions to the consultation are contained in **appendix i** of

this report. The proposal is that Members note the content of this report and the responses contained in the appendix for submission to the Department for Levelling Up, Housing and Communities by the deadline of 11:45 pm on 2 March 2023.

4 Alternative Options

4.1 This report is for noting and therefore there are no reasonable alternatives.

5 Consultation Undertaken or Proposed

5.1 Local planning authorities are being asked specifically to respond to this open consultation from their point of view and therefore no consultation has been undertaken or is proposed.

6 Implications

Issue	Implications
Corporate Plan	The proposals ensure the Council is providing views on how national policy can support the delivery of Objectives 1 and 2 of the Corporate Plan.
Financial, Resource and Property	None of the proposed changes will incur additional expense at this stage as they are proposals and lack the level of detail required to adequately consider future implications.
Legal, Statutory and Procurement	None identified at this stage as this is a consultation but the lack of detail and reliance on future iterations of the National Planning Policy Framework could have implications for the Council.
Crime and Disorder	None identified at this stage.
Environment and Climate/Ecological Emergency	The proposals ensure the Council is providing views on how national policy can support our own policies to address the Environmental and Climate/ Ecological Emergency.
Health and Wellbeing	None identified at this stage.
Safeguarding of Children, Young People and Vulnerable Adults	None identified at this stage.
Risk Management and Health and Safety	None identified at this stage although there is uncertainty around how some of the proposed changes could be implemented in the

	absence of detail in this consultation and reliance on future iterations of the National Planning Policy Framework.
Equality and Diversity	None identified at this stage.
Privacy and Data Protection	None identified at this stage.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix i: Proposed SBC response to Levelling-up and Regeneration Bill: reforms to national planning policy

8 Background Papers

None

Proposed SBC response to Levelling-up and Regeneration Bill: reforms to national planning policy