

Landmark Chambers and Town Legal's 'NPPF 2023 Update – What Next?' seminar read out

Monday 15 January 2024

Intro

Thank you to all those who attended our recent seminar: [NPPF 2023 Update – What's Next?](#) - hosted jointly by [Landmark Chambers](#) and [Town Legal LLP](#). We had an excellent turn out with a packed audience at the Lincoln's Inn Ashworth Centre which resulted in the seminar being followed by a brilliant Q & A session with the audience and an opportunity to network with fellow planning industry professionals.

If you would like to re-cap the points discussed or were unable to attend the event, we have prepared below a brief summary of the event and the content discussed. We have also provided below a link to the audio recording of the whole event including the Q & A session.

Rupert Warren KC

Rupert Warren KC, barrister and Head of the Planning Group at Landmark Chambers, discussed the three main changes in the NPPF dealing with housing.

The first change relates to paragraph 61 of the NPPF and is that the outcome of the standard method for assessing housing requirements for an area is now expressed as an "advisory starting-point". Exceptional circumstances still need to be shown to use an alternative to the standard method, but these now include relating to the "particular demographic characteristics of an area", with the word "demographic" being inserted. This applies to all plans which reach regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (pre-submission) stage after 19 March 2024. The exceptional circumstances test will still be a substantial barrier in order to depart from the standard method. This change is not as radical as many people expected and is more of a change of emphasis than a fundamental change. However, that shift in emphasis may have practical importance, as local authorities are already asking their consultants advising them to take another look at demographics, which will slow things down.

The second change relates to paragraph 76 of the NPPF which applies for the next two years in respect of applications made after 20 December 2023. The effect is there is no need for an LPA to have a five-year supply of housing if it has an adopted plan which is less than five years old and it identified at least a five-year supply at the time that its examination concluded. There is a definitional issue as to what an "adopted plan" is, given some plans are in two parts, and it is unclear at what point the five years needs to have been identified. The change will also introduce asymmetry: applications made on or before 20 December 2023 will be able to access the tilted balance in paragraph 11(d) but those made afterwards will not. However, it may be in practice this is not effective, because a failure against the trajectory of housing delivery may be a material consideration.

The third change relates to paragraph 226 which also applies for the next two years and provides that, in respect of applications made from the date of publication of the NPPF, LPAs which have an emerging local plan that has either been submitted for examination or reached regulation 18 or 19 stage, including both a policies map and proposed allocations towards meeting housing need, will only be required to demonstrate a four-year supply of

housing. There is again definitional ambiguity arising from this as to what a policies map is. There is also ambiguity over whether this means you need to demonstrate four years out of five or whether you need to demonstrate four years out of four years: if it is the latter, this may in fact make it harder for LPAs to demonstrate the requisite supply.

[Anjoli Foster](#)

Anjoli Foster, barrister at Landmark Chambers, discussed the impact on plan-making.

The first point is that there is enhanced encouragement for plan-making. Paragraph 1 says that up-to-date local plans is the priority if sufficient housing and other development is to be provided. This is reflected in the wider changes in the NPPF, including those discussed by Rupert.

The second point is that new wording in paragraph 145 of the NPPF says expressly there is no requirement for Green Belt boundaries to be reviewed or changes when plans are being prepared or updated, and may choose to review or alter those boundaries where there are exceptional circumstances. While the wording of the NPPF has not dramatically changed (and retains the exceptional circumstances test), in the real world this change may have significant consequences as the change in emphasis may discourage some LPAs.

The third point is the transitional provisions contained in Annex 1 of the NPPF, and specifically paragraph 230 which says that the policies in the new NPPF only apply for the purposes of examining plans which have reached regulation 19 stage after 19 March 2024. This was not detailed in the December 2022 consultation version. At the time, some LPAs paused local plan examinations, together with support from inspectors, to wait for the new NPPF to be published to see if it had consequences for the local plan examination. This transitional provision means they did not need to do so.

The final point concerns the test of soundness in plan-making. The consultation draft of the NPPF proposed to remove the requirement within that test that local plans be justified by reference to reasonable alternatives and based on proportionate evidence. The aim was said to speed up examinations. Following the consultation responses, the Government decided not to take this forward, but there are further changes proposed (not yet out for consultation) to plan-making as part of the Levelling-Up and Regeneration Act 2023 and the introduction of national development and management policies which will be considered together with local plans.

[Meeta Kaur](#)

Meeta Kaur, Partner at Town Legal LLP, discussed the changes in the NPPF dealing with design and beauty, small sites and community-led housing, retirement housing and agricultural land.

In terms of design and beauty, Meeta discussed the new policy provisions supporting mansard extensions at Chapter 11, the emphasis on the use of local design codes, developed in line with the National Model Design Code, and the use of planning conditions to refer to clear and accurate plans and drawings of a development.

Next, she discussed the introduction of “community-led housing development”, which now replaces “entry level sites” in the NPPF, and its detailed definition. Meeta highlighted the changes at paragraph 70 and 73 of the NPPF and footnote 37 which outline how local planning authorities should seek and support small and medium sites and community-led development exception sites.

The singular amendment with regards to specialist housing for older people can be found at Chapter 5 paragraph 63 of the NPPF, which paragraph notes the importance of identifying housing needs of different groups. That paragraph now notes in more detail the different types of housing that can cater for older people including retirement housing, housing-with-care and care homes.

Finally, Meeta identified the new policy provision, at paragraph 181 of the NPPF and footnote 62, which states that local planning authorities need to consider availability of agricultural land used for food production when deciding which sites are most appropriate for development. The result perhaps of long-running resistance to solar farm development in certain areas.

Simon Ricketts

Simon Ricketts, Partner at Town Legal LLP, discussed how the NPPF changes tie into the legislative changes brought about by the Levelling-up and Regeneration Act 2023 (“the LURA”).

A key general point to bear in mind in relation to the LURA is the fact that nothing of substance is yet in force, with many provisions awaiting further consultation (eg reforms on plan-making, the infrastructure levy, environmental outcomes reports and the changes to compulsory purchase). Moreover, there is uncertainty as to how much progress will be made before this year’s General Election.

Simon notes that the matters in relation to the LURA to keep an eye on are:

- a. Plan making reforms since Labour, if elected, are likely to continue with these; in particular:
 - i. Section 94 – the introduction of the concept of the “national development management policy” (NDMP) which are to have the same weight as development plans in decision-making; and
 - ii. Section 93 – changes to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires decision-makers to ensure that decisions are made in accordance with the development plan “**and NDMPs**” unless material considerations “**strongly**” indicate otherwise.
- b. Measures to tackle the supposed issue of “land banking” (see Sections 111-114 of the LURA) such as:
 - i. The power to decline to determine applications in cases of earlier non-implementation; and
 - ii. The power to impose a condition on residential planning permissions requiring development progress reports every 12 months, in addition to a requirement for development commencement notices.
- c. The introduction of a new Section 73B procedure in the Town and Country Planning Act 1990, which allows applications for planning permission which are not substantially different from the existing planning permission.

Simon also questions whether some of the changes introduced will indeed ever materialise, and whether others will make any real progress ahead of an election, meaning that we should perhaps set on one side for the time being further detailed consideration. These changes include:

- a. The Infrastructure Levy
- b. Environmental Outcome Reports; and
- c. Community land auctions and Street Votes.

[Sam Stafford](#)

Sam Stafford, Planning Director at the Home Builders Federation, discussed the political origins of the NPPF changes and LURA starting with Brexit, namely Theresa May's marginal majority in Parliament and how the Brexit deal votes saga potentially emboldened backbenchers, followed by Boris Johnson's statement on how homes only need to be built on brownfield sites, which precipitated grumblings in Parliament about the standard method, leading to a discarding of top-down targets during the Truss-Sunak leadership campaign. He discussed in depth the political motivations behind the NPPF changes and the LURA, especially in terms of the impact on house building. He notes that there is some merit in the suggested changes, for example in reforming the role that statutory and non-statutory consultees play in the plan-making and the decision-making processes. However, he questions whether the NPPF changes will indeed impact the behaviour of local planning authorities in relation to plan-making, especially with the General Election around the corner, which raises doubts as to the shelf-life of the changes proposed.

The seminar was followed by a Q&A session, where the topics included the panel's view on suggested Labour policies, a Competition Markets Authority report on house building, and how the transition arrangements will affect plans as they move through the system.

To listen to the audio recording of the event, including the Q&A session, click [here](#).

These notes were produced by [Charles Bishop](#) (Landmark Chambers) and [Chatura Saravanan](#) (Town Legal).