

## Transition to the Localism Act and the National Planning Policy Framework

### 1 Introduction

- 1.1 This note has been prepared to offer some information and advice to authorities considering how to respond to the enactment of the Localism Act and the publication of the finalised NPPF.
- 1.2 POS Enterprises has developed a briefing for the Local Government Association on the published NPPF, and this can be accessed through the Society website.<sup>1</sup>
- 1.3 This advice note focuses on five matters -
  - the new flexibility in relation to the local plan
  - some implications of the duty to cooperate
  - how LPAs can update or amend their local plan to make it compliant with the NPPF
  - retaining national or regional policy which will otherwise be lost
  - development management decision-making and the NPPF

### 2 The local plan

- 2.1 There appears to be uncertainty among some practitioners whether the use of the term “local plan” by the new Government signals a significant change from the LDF. In particular, some have asked whether it marks a requirement to move to a single comprehensive development plan document, and whether they should act now to adapt their current DPD work to a single development plan document.
- 2.2 In reality the use of the term “local plan” for the suite of development plan documents is largely re-badging from the previous LDF terminology, but it does reflect:
  - the revocation of regional strategies;
  - greater flexibility for LPAs to decide the form and content of the development plan documents they prepare: and
  - Government encouragement to minimise the number of DPDs
- 2.3 The greater flexibility comes through the commencement of the Local Planning Regulations 2012, which replace the previous development plan regulations. Among other things they remove the requirement to prepare a core strategy, and the prescription in relation to AAPs. As a consequence the requirement that DPDs must conform with the core strategy falls away. These changes give LPAs the freedom to decide the best form of local plan for their area. The ability to prepare joint DPDs, including joint strategies, is unchanged.
- 2.4 LPAs can therefore continue progressing current core strategies or other DPDs to adoption, and indeed are strongly encouraged to do so, because that will give them an up-to-date local policy framework. Apart from its intrinsic value, this will be important both in relation to the presumption on favour of sustainable development and in providing the context to implement the CIL.
- 2.5 Once current DPDs are completed and adopted, LPAs can consider what to do next by way of plan preparation. They can use the new flexibility to decide the most apt way to provide development plan coverage for their area. They may conclude that having secured an adopted core strategy the best solution is to move to a comprehensive single plan document. Alternatively they may conclude that it is more appropriate to continue to have separate DPDs dealing with strategy and detail, including possibly DPDs for parts of their area (akin to AAPs).

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<sup>1</sup> See <http://www.planningofficers.org.uk/POS-Library/Others/Detailed-Briefing-on-the-National-Planning-Policy-Framework-340.htm>

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- 2.6 LPAs also have greater freedom now to decide the scope and content of individual DPDs, and can use any DPD to update parts of the strategy for the area, rather than having to carry out a review of the core strategy as previously.
- 2.7 As an example of how the new flexibility might be used, a group of neighbouring authorities could decide to prepare a joint strategy DPD, but that it should only address those matters on which decisions are needed which go wider than individual authority areas. Such a strategy would not necessarily cover all the matters which previously had to be included in a core strategy, though the LPAs would need to ensure that the joint strategy DPD properly addressed the strategic consequences of key decisions. The individual LPAs would each then prepare a further DPD or DPDs to apply the strategy to their area, coordinated with work on any neighbourhood plans. This approach could address both the duty to cooperate and the principle of localism, by resolving strategic principles with partners but leaving the individual LPAs and the organisations preparing neighbourhood plans to deal with all other matters.
- 2.8 Metropolitan authorities can continue to prepare joint minerals and waste DPDs. Since the requirement to prepare a core strategy is removed, the issue of such plans having to conform with and “hang from” the core strategy has fallen. LPAs will of course need to ensure that joint minerals and waste plans are compatible with the other DPDs of the constituent authorities.
- 2.9 In all local plan work, LPAs should ensure that they distinguish strategic policies from other policies, as required by paragraph 184 of the NPPF. The purpose of this is to be explicit about which policies of the local plan neighbourhood plans and neighbourhood development orders must conform with (paragraphs 8(2)(e) and 5(5)(b) of Schedule 4B of the TCPA 1990 added by Section 116 of the Localism Act).

### **3 The duty to cooperate**

- 3.1 The duty to cooperate came into force with Royal Assent for the Localism Act. The Act introduces the duty into the Planning and Compulsory Purchase Act 2004 by a new Section 33A. Planning authorities should be clear that it is a statutory duty which must be complied with: it is much more than an expectation or exhortation.
- 3.2 The Localism Act further amends the PCPA by adding to Section 20(5) (which specifies the matters which the Inspector must consider at examination) a new sub-section (c) that the Inspector must consider “whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation”. The new provision applies to all plans submitted for examination after Royal Assent, but not to plans already submitted and in the examination process.
- 3.3 The effect of the new Section 20(5)(c) is that if the Inspector concludes that an authority has not complied with the duty, he or she has found that the plan is unlawful. Accordingly it cannot proceed. This is not a matter of soundness but of compliance with primary legislation. The NPPF at paragraphs 178 to 181 contains policy guidance on what authorities might do to demonstrate that they have fulfilled the duty, and the Planning Advisory Service has published advice on the matter.
- 3.4 The duty is triggered where “sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas”
- 3.5 The way the duty is framed is demanding, including a requirement on each LPA to consider whether to undertake joint planning. It applies not only to plan making but also to preparatory or supporting work for plan making. It requires that LPAs should -

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- cooperate “in maximising the effectiveness with which” plan making and preparatory or supporting work are undertaken, and
  - “to engage constructively, actively and on an ongoing basis in any process by means of which” plan making or preparatory or supporting work are undertaken
- 3.6 The expectation is therefore clearly that the LPAs and others will set themselves to achieve positive outcomes from the process of cooperation, and that they will stick at it with real commitment.
- 3.7 It is known that in some areas elected members may be unwilling to engage with appropriate authorities across boundaries. Officers will need to bring the force of the duty to their attention.
- 3.8 Apart from the risk of the Inspector at examination concluding that the duty has not been met, there is the further risk of judicial review. Since the duty is a legal requirement, it extends the potential bases for judicial review, and there are already indications that some lawyers see it as offering opportunities for clients. The risk is therefore seen as a real one, which prudent LPAs will seek to minimise.
- 3.9 Where a plan has survived examination judges may be expected to seek to follow the established principle that they should not normally put their assessment in place of that of a qualified Inspector with all the evidence to hand. However, should lawyers construct a case related to the strict wording of the duty, there appears to be considerable scope to be able to argue interpretation, and that the LPA concerned has not complied with the legal requirements even though the Inspector may be satisfied.

## 4 Making the local plan compliant with the NPPF

- 4.1 The finalised NPPF has not confirmed all the shifts of planning policy signalled in the draft. In particular, it no longer seeks to give the economy greater weight relative the social or environmental considerations, and of course the reference to the default answer to development proposals being “Yes” has gone. Nevertheless, it does make clear the importance the government attaches to promoting and supporting the economy, and retains the requirement that plans should be positively prepared so that objectively assessed development needs are met.
- 4.2 The Society lobbied for with others effective transitional provisions from the previous body of PPSs and PPGs to the NPPF, and takes some satisfaction from the one year transition period contained in the new Annex on Implementation. It should be noted that the provision only applies to DPDs prepared under the LDF system, and not to saved policies from earlier local plans or UDPs.
- 4.3 Given that the finalised NPPF does not contain as many policy shifts as did the draft, LPAs will wish to consider whether in their particular circumstances they need to amend their local plan to make it compliant with the NPPF.
- 4.4 Where an LPA has a core strategy under preparation it will need to ask itself whether the emerging plan conforms with the greater emphasis on the economy and being positively prepared. Where the answer is “No”, the LPA will no doubt bring forward revisions to rectify the matter.
- 4.5 Where an LPA has an adopted core strategy, it will need to consider how well the adopted plan reflects the greater emphasis on the economy and the requirement that it should be positively prepared. If it concludes that the plan fits badly with this aspect of the NPPF, this will point towards an early review, whether in the form of a comprehensive local plan or a core strategy review, because the shift in emphasis is not just a matter of detailed policy, but the overall thrust of the plan and what constitutes up-to-date policy.

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- 4.6 Where the view is taken that an adopted core strategy is in tune with the emphasis in national policy towards the economy and positive plan preparation, the LPA can consider whether it wishes to make changes to bring the local plan into conformity with the more detailed changes in national policy. Where it is already working on a further DPD, the new flexibility in the replacement Development Plan Regulations offers the means to do this. This is because by removing the requirement that there must be a core strategy and what it should contain, the new regulations also remove the restrictions on what other DPDs may address. This means LPAs can use a current DPD under preparation as the vehicle to make changes to policies contained within the adopted core strategy. In doing so they will need to ensure that the local plan as a whole remains coherent.
- 4.7 There is an alternative possibility, and that is that an LPA could bring forward a single issue DPD, which would be restricted to just those policy changes necessary to make the local plan compliant with the specific policy changes brought by the NPPF. With good project management and helpful decision-making processes, it should be possible to produce such a DPD in about a year.

## 5 Retaining “lost” national or regional policy

- 5.1 PPS12 says that DPDs should not repeat national or regional policy. Authorities which have followed this steer may now find that there are regional policies, or detailed parts of national policy which are important to their area, and which will be lost with the abolition of regional strategies and finalisation of the NPPF. Clearly, the best way to deal with the issue is within the local plan, and the flexibility offered by the replacement Regulations means that this can be done by using a current DPD as the vehicle.
- 5.2 However, it may not be practical for timing or other reasons to take such an approach. The Society suggested an alternative in Section 3 of its advice note *Planning post regional strategy revocation - an advice note*<sup>2</sup>, which is to adopt such policies as SPD until such time as they can be incorporated into the local plan.
- 5.3 It is understood that CLG takes a rather different view, and advises that where LPAs wish to retain elements of national or regional policy they should do so by means of a single issue DPD. It is acknowledged that a DPD will have substantially greater status than SPD, so this is certainly the safer course. Whichever course is taken, public consultation can be focused and concentrate on ensuring that people have the opportunity to comment.

## 6 Development management decision-making

- 6.1 The finalised NPPF overcomes a shortcoming of the draft by making it clear that in decision making the starting point is the development plan, and that the NPPF does not change or modify that situation. This should help other parties better understand the role of the NPPF and its status relative to local plans.
- 6.2 What does change is the introduction of the presumption in favour of sustainable development. The NPPF says that for decision-taking this means -
- “approving development proposals that accord with the development plan without delay; and
  - where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
    - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
    - specific policies in this Framework indicate development should be restricted”

<sup>2</sup> See [http://www.planningofficers.org.uk/POS-Library/POS-Publications/Planning-Post-RSS-Revocation---an-advice-note\\_31.htm](http://www.planningofficers.org.uk/POS-Library/POS-Publications/Planning-Post-RSS-Revocation---an-advice-note_31.htm)

6.3 To a large extent the introduction of the NPPF is not radically different from the previous situation when a new or revised PPS was published. The decision maker will need to decide in the particular circumstances of the case how much weight should be given to the development plan relative to the new policy in the NPPF (and of course other material considerations). We wait to see how Inspectors and the Secretary of State deal with the presumption in cases which come before them.

## 7 **Review**

7.1 Examples of case law are invited to assist in the review of this document. Contributions should be sent to [andrewwright@posenterprises.co.uk](mailto:andrewwright@posenterprises.co.uk).