

National Planning Policy Guidance

Housing Delivery Test: Draft Measurement Rule Book

POS response to consultation proposals

Introduction

POS welcomes the opportunity to comment on the draft National Planning Policy Guidance (NPPG) and Housing Delivery Test: Draft Measurement Rule Book (HDT).

When the original NPPF was developed and introduced in 2012 the PPG was not contemplated. As a consequence, there is a degree of guidance in the NPPG that MHCLG have acknowledged should be in the PPG and we welcome this proposal to consolidate policy issued after 2012 into the new NPPF. We do feel that there are a couple of areas where guidance is clear in the draft NPPG and HDT but not made clear in the NPPF, we indicate this in our comments. We have also commented in detail on the NPPF consultation questions and submit a tracked changes version of the current NPPF drafting.

Paragraphs are not numbered within the draft NPPG and HDT, so our references are by page and paragraph. Where necessary for clarity, paragraph headings or relevant text from the draft have been used to show where comments apply.

1 Viability

1.1 In general POS supports the approach being taken to viability in the draft. Particular points which are welcomed are:-

- Viability should take account of all relevant policies and standards
- Comparable data can inform but not determine value
- The approach to the use of viability appraisals in decision making (including review mechanisms) should be set out in local plans.
- Standardised inputs should be the starting point in VAs (with the necessary reservations)
- Land value should be calculated on the basis of existing use value plus

- Benchmark land value should fully reflect all relevant policy requirements including planning obligations and CIL
- The price paid for land is not relevant justification for failing to accord with relevant policies in plans
- All assumptions in VAs should be clearly set out and where these differ between plan making and decision making they should be clearly explained
- Viability Assessments should be publicly available wherever possible (although there may be legal reasons preventing LPAs disclosing VAs)

1.2 There are areas in the draft guidance where POS considers further clarification would be helpful:-

- Review mechanisms should be a requirement where a development proceeds on the basis that a viability assessment at the point of decision making has shown that full policy compliance cannot be achieved. They may be appropriate in smaller scale developments – not just ‘large or multi-phased’.
- Market evidence – it is rare that market evidence offers accurate comparability. Circumstances around scale, cost, location, timing, compliance with policy, etc will differ between sites that on the surface seem comparable but such factors can make significant differences. Market evidence and comparables can inform but should always be treated with caution.
- It should also be recognised that the existence of a planning permission on a site should also be treated with caution as it does not indicate that the permission would be viable to implement. Any supposed uplift in value through an unimplemented permission should be carefully investigated.
- The draft guidance states that ‘for the purpose of plan making’ developers profit at 20% of GDV ‘may be considered a suitable return’. This should be treated with caution as the actual profit will also be significantly influenced

by other factors such as contingency , price inflation and the buffers built in to VAs. Where the buffer is substantial (and examiners views have varied on this point but it is often 50% or more) and contingency is included on top of a 20% profit margin the likely profit to the developer can be increased considerably. 20% may be an reasonable figure where the assumptions about these other factors are also reasonable, but they do need to be seen in the round and the guidance needs to make this clear.

- POS supports the proposed monitoring and reporting of both CIL and S106 contributions through infrastructure funding statements and would welcome involvement in developing templates and processes for reporting to ensure transparency without introducing undue burdens on LPAs

2 Housing delivery

- 2.1 Although it is not made explicit, this would be a new section of the NPPF, covering matters currently found within the chapter Housing and Economic Land Availability Assessment. Given the importance of the matter, it is felt that this would be clearer and more accessible. However, in due course the Society would welcome sight of how that section (and any others affected) would be revised to reflect the new section, and the opportunity to comment on matters of clarity and fit.
- 2.2 Page 13 third paragraph says “Where the plan is more than five years old and the housing figure needs revising, the starting point will be local housing need using the standard method.” This continues to miss the point that it would create a perverse incentive and be unfair in some circumstances. Where an authority should be contributing to meeting the needs of another, its five-year requirement would be set by just its own need, and would only increase when it adopted a plan which catered for the other authority’s needs. So the incentive for some could be to delay for as long as possible to avoid a potentially big hike in the requirement.

- 2.3 Conversely, where an authority cannot meet its full needs because it is tightly bounded or subject to severe constraints (as per paragraph 11 of the draft revised NPPF) until its plan was in place it would have a 5-year requirement which was not achievable, and would potentially be penalised for its geography rather than any action or inaction on its part.
- 2.4 Page 14 header says “Can previous over-supply of housing be considered when determining the objectively as assessed need for housing”. The Society has suggested in the relation to the draft revised NPPF that the term “objectively assessed need” should only be used in relation to the current system, where the need is derived from a SHLAA, and that for the future, when the standard methodology is used the reference should be to “identified need” or “housing need”.
- 2.5 Page 4 fifth paragraph under the heading referred to above is supposed to be about whether previous over-supply can be considered when determining the housing need, but the latter part of the paragraph actually deals with shortfalls from previous years.
- 2.6 Page 14 seventh paragraph says “Where local planning authorities are unable to address past shortfalls over a five year period due to the scale of shortfalls they may need to reconsider their approach.” This appears unnecessary, because the situation is effectively covered by the previous paragraph. Moreover, it gives no steer as to what they might do. If it is considered necessary, it should provide some guidance. All we can see that could be done would be to propose to meet the under-supply over a longer period, which is covered by the previous paragraph.
- 2.7 Page 16 third paragraph deals with what constitutes a deliverable site, and refers to the Glossary definition in the draft revised NPPF. The Society has commented on this saying -
- “Housing land supply has always been based on assessments of what can reasonably be expected to happen, and this is an inherent part of practice in preparing SHLAAs. The proposed change would mean that rather than

needing to show that there is a reasonable prospect that delivery on sites can happen, LPAs would be required to demonstrate somehow that it definitely will happen. This would be beyond an LPA's control, since only landowners or developers could give the answer, and even then in many cases they could only indicate their intention or expectation, not say that it will definitely happen. The reference should be changed to say completions are capable of beginning within five years.”

- 2.8 Page 17 we welcome that the NPPG and HDT draft rule book set out that LPAs who are preparing joint plans to be able to manage housing delivery on a joint plan basis. In addition Table 2 of the HDT Draft Measurement Rule Book sets out that a joint housing requirement figure can be used. However, the wording in the NPPF is ambiguous on whether this is allowed. This should be set out more clearly in the NPPF which provides the policy context. If it remains simply guidance, it will be vulnerable to challenge. We also welcome guidance for areas with stepped rather than annual average requirements.
- 2.9 Page 20 introduces the housing delivery test. We have real difficulty in following the measurement rule book and the logic behind it.
- 2.10 In particular, paragraph 3 of the rule book says that where there is an up-to-date plan -
- “the figure for the number of homes required used for the HDT measurement is the lower of:
- “The latest adopted housing requirement figure; or
 - The local housing need figure (projected household growth for financial years 2014-15 to 2017-2018) and unmet neighbour’s need figure”
- 2.11 There is nothing to say exactly what is meant by the “unmet neighbours’ need figure”. Is it the whole unmet need, the LPA’s view of how much it should provide, or an agreed figure, or something else? If it is intended to be an agreed figure, it would be logical to refer to the relevant statement of common ground here.

- 2.12 Table 2 then refers to the “Local housing need figure (projected household growth for years 2014-15 to 2017-2018)”, with no reference to neighbours’ unmet need, which appears incorrect and does not reflect what paragraph 3 says, quoted above.
- 2.13 Also, the heading to Table 2 refers correctly to “Housing figure for the HDT, depending on type and age of the strategic housing policies in a plan-making authority” but then in relation to areas covered by a spatial strategy refers to “Housing requirement in the Local Plan.” The reference should be to strategic policies.
- 2.14 Since it will be crucial that the housing delivery test is applied correctly to avoid dispute about the basis of the calculation, MHCLG is urged to re-visit the measurement rule book to ensure that it is completely unambiguous.
- 2.15 Page 23 first paragraph addresses the matters to be reviewed and actions to be taken in preparing an action plan. There are two points to make here. First, it should be made clear that the action plan should address whether the strategy of the plan is being effectively delivered, and consider possible action in that context.
- 2.17 Second, we have some reservations about the list of possible actions, which looks as if it has tried to identify every possibility. There is a danger that the list will be seen as the minimum to be addressed, not examples, whereas there should be a focus on the main causes of non-delivery and how they can best be tackled. We suggest that the paragraph is revised to stress the need to identify the particular reasons for non-delivery and what can be done about them, and either omit examples or offer a few of the more likely actions.

3 Local housing need assessment

- 3.1 The Society is disappointed that MHCLG has kept the method for calculating housing need unchanged from that consulted upon in “Planning for the right

homes in the right places”. The Society warned of a number of undesirable consequences -

- LPAs faced by a big increase in need from the present level would have to review how they can meet the increase, so the sudden increase in needs figures could be expected to slow down the preparation of plans to meet those needs
- In much of the Midlands and most of Northern England, where the new method would result in reduced housing needs, each LPA which felt it needed to set a higher level of need would have to make its own case, which would involve additional cost and time
- some areas would see very large differences between the amount of land allocated and the actual take-up. The consequence of this would be that builders would cherry pick sites. This would happen not just within LPA areas, but between one area than another. So LPAs in areas which were considered less attractive by house builders could find that they have ample land allocations but little actual house building

3.2 The Society remains of the view that the transition to the full need countrywide should be staged to reflect progress in increasing housing delivery, with the formula reviewed upwards from time to time. This would reduce short term increases in the needs figures, and create an incentive for some LPAs to get plans in place before their needs figures rise again. In areas where there would otherwise be a reduction from current need figures, there should be an automatic uplift to provide for economic growth. This could also allow MHCLG to reduce the cap level from 40% to, say 30% of current needs assessments, and thereby somewhat reduce the scale of increases in the SE in particular.

3.3 Turning to more detailed comment on the draft revision, page 24 bottom paragraph says that median affordability ratios should be calculated using median workplace earnings. The Society has previously advised that it would be better to use median residence place earnings, to avoid distortions where there is a substantial difference between the earning level of the resident population and the employment offer in the area.

- 3.4 Page 27 fifth paragraph on past under delivery is supported because it correctly represents the effect of the new standard method.
- 3.5 Page 27 ninth paragraph is welcomed because it reinforces the function of a spatial development strategy in resolving key issues such as the housing need figure.
- 3.6 Page 28 to 30 deal with needs for different types of housing. It should be recognised that to provide the evidential basis for this a SHMA will still be required, albeit that it will not address overall housing need.

4 Neighbourhood plans

- 4.1 Again, whilst it is not mentioned, this section would add to and change the existing guidance in the NPPG on neighbourhood planning. The Society would welcome sight in due course of how the published NPPG would be amended to incorporate the changes, and the opportunity to comment on matters of clarity and fit.
- 4.2 Page 34 first full paragraph is considered to potentially undo the benefit of the preceding guidance on setting housing requirement figures for NDPs. It is suggested that it is omitted.

5 Plan-making

- 5.1 As with other parts of the consultation, the amended and additional guidance here would need to be assimilated into the existing NPPG. The Society would welcome sight in due course of how the published NPPG would be amended to incorporate the changes, and the opportunity to comment on matters of clarity and fit. Included as Appendix 1 is a diagram that they could use as a basis in PPG to explain better what the new planning landscape should look like.

- 5.2 Page 37 second paragraph in relation to strategic policies refers to their being put in place in strategic plans, prepared either by a local planning authority, jointly with others. The Society has commented on the draft revised NPPF urging that this is either changed to refer to plans containing strategic policies, or footnote 5 to paragraph 11 of the NPPF be changed to do so.
- 5.3 The Society has also warned against the reference to plans prepared individually, because that could give be seen as giving encouragement to LPAs seeking to go it alone when they really should not. A suitable revision to the NPPF should be reflected here.
- 5.4 Page 38 second paragraph makes the point that to demonstrate that they can maintain a 5-year supply and report on performance against the housing delivery test, LPAs may need additional development plan documents to allocate sites. Whilst the principle of this guidance is right and is supported, the reference should not be to additional DPDs but to local policies, since the best way to bring these forward may well be to use the same vehicle as for strategic policies.
- 5.5 Page 38 fourth paragraph is welcomed for offering guidance that a statement of common ground should address any matters of disagreement, since that will be a jointly prepared statement of the position.
- 5.6 Page 38 Statements of common ground - in responding to the consultation "Planning for the right homes in the right places" the Society expressed concerns about a lack of clarity about just what was intended, and sought a firm expression of their function. The paragraph at the bottom of the page (and over the page) is welcomed for the clarity it provides.
- 5.7 Page 39 second paragraph sets out the required content of a statement of common ground, and is helpful and welcomed. However, it should be clear that these will be prepared on an iterative basis and that, where the statement of common ground covers a number of LPAs preparing individual LPs, the expectation should be that all the contents listed (a-h) have been addressed by the time the first plan within the SCG area is submitted for examination. An

additional contents point should be added to make it clear that the statements should set out the high level spatial strategy for addressing development needs across the area. This is a key point emerging from the pilots, it will be especially important where the statement area is relying on a number of large strategic developments (e.g. urban extensions, new communities of any scale).

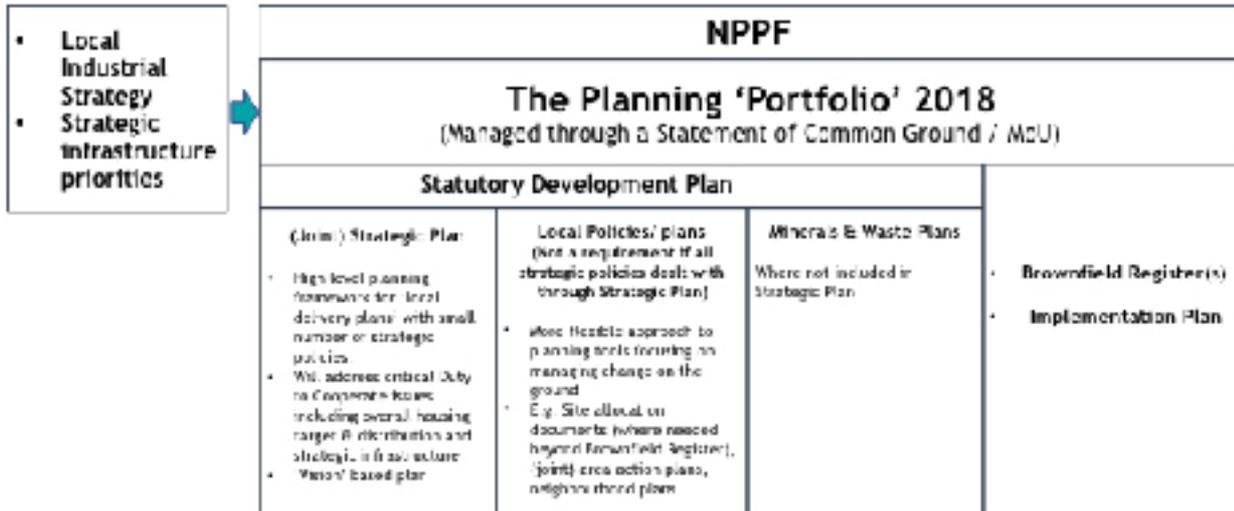
- 5.8 Page 40 fourth paragraph refers to review of a statement of common ground when “a decision is taken to revise a development plan document or revise strategic policies in the defined area”. The reference to a decision being taken should be developed slightly to make it clear that this means a resolution by an LPA, to avoid uncertainty as to what would constitute a decision. In two-tier areas, it should be more explicit that county councils must be full signatories to the SCG given the importance of strategic infrastructure.
- 5.9 Page 42 third paragraph says a statement of common ground will still be required where a DPD is to be prepared which will contain only local policies. This is questioned, because local policies should not raise strategic issues affecting other LPAs, so the duty to cooperate should not come into play.
- 5.10 Page 50 top paragraph lists the matters to be considered in a plan review in determining whether policies should be update. It makes no reference to needs which cannot be met by neighbouring authorities and any changes to these, and should be amended to do so.
- 5.11 Green Belt review - Whilst the NPPF contains policy on how to consider whether Green Belt boundaries should be changed to accommodate development, there is no guidance at all on how LPAs should consider the importance or otherwise of the contribution that different areas of land make to it. Practice has developed of addressing this through an assessment of the contribution that different areas of land make to the five Green Belt purposes. Whilst there has been some convergence of practice, there are still differences of approach, some of which are considered questionable, but there is no authority to refer to for affirmation. MHCLG is therefore urged to include within the NPPG guidance on Green Belt assessment. Our consultancy arm POS Enterprises has advised extensively on

Green Belt assessment drawing on critical examination of a range of practice, and we should be pleased to provide information about the advice which is given.

6 Housing Delivery Test

- 6.1 POS has a fundamental and strong objection to the Delivery Test as currently proposed. Being measured on something that you do not control (we do not build the homes) seems fundamentally unjust. If the consequence of the Delivery Test was to trigger the need for an action plan only, that would be a reasonable consequence. However, the proposed result renders the LPAs 5YHLS out-of-date and triggers the “tilted balance” by applying the NPPF to decision-making in the context of a presumption in favour of the development.
- 6.2 This will lead to unintended consequences where developers deliberately delay implementing sustainably preferable brownfield sites to force the release of green field sites. POS’s position has always been, if we are given the tools to be proactive (and we have set these out in our Manifesto no. 7 Compulsory purchase: three essential improvements) then measuring our delivery performance may be justified, but without the tools to be able to unlock stalled or blocked housing sites it cannot be justified as a piece of public policy as it is fundamentally unfair.

Appendix 1 - a diagram that they could use as a basis in PPG to explain better what the new planning landscape should look like.



Plan-making 2018