

# East Herts Council Non-Key Decision Report

**Date:** 10 February 2023

**Report by:** Councillor Jan Goodeve – Executive Member for Planning and Growth

**Report title:** Levelling-up and Regeneration Bill: Reforms to National Planning Policy

**Ward(s) affected:** All

---

## Summary

- This report proposes East Herts Council's response to the Levelling-up and Regeneration Bill: Reforms to National Planning Policy consultation.

**RECOMMENDATIONS FOR DECISION:** that the Department for Levelling Up, Housing, and Communities be informed that East Herts Council:

- (A) Welcomes the opportunity to comment on the proposed reforms to National Planning Policy; and
- (B) Submits the responses to the National Planning Policy consultation questions included at Appendix A to this report as its detailed response to the Levelling-up and Regeneration Bill: Reforms to National Planning Policy consultation.

## 1.0 Proposal(s)

- 1.1 The purpose of this report is to advise Members of the implications of the Reforms to National Planning Policy for East

Herts and to agree this Council's response to the consultation.

## **2.0 Background**

- 2.1 The consultation seeks views on the government's approach to updating the National Planning Policy Framework (NPPF). The government is also canvassing opinion on their proposed approach to preparing National Development Management Policies (NDMPs).
- 2.2 A fuller review of the NPPF will be required in due course, and its content will depend on the implementation of the government's proposals for wider changes to the planning system, including the Levelling-up and Regeneration Bill.
- 2.3 The Department of Levelling Up, Housing, and Communities is seeking views on 58 specific questions, which are detailed in Chapter 14 of the consultation document (see background papers). **Appendix A** to this report contains the Council's response to the consultation questions.
- 2.4 The consultation began on the 22 December 2022 and closes on at 11:45pm on the 2 March 2023. The government says it will respond to the consultation by Spring 2023, publishing the framework revisions as part of this, 'so that policy changes can take effect as soon as possible'.

## **3.0 Reason(s)**

### **Introduction**

- 3.1 The government has set out its commitment to levelling up across the country, building more homes to increase home ownership, empowering communities to make better places, restoring local pride and regenerating towns and cities. The February 2022 Levelling Up White Paper reiterated the

government's commitment to making improvements to the planning system to achieve this, by giving communities a stronger say over where homes are built and what they look like. The Levelling-up and Regeneration Bill (the Bill) which is currently before Parliament will put the foundations in place for delivering this by creating a plan-led system with a stronger voice for communities.

- 3.2 Whilst the Bill begins to put communities at the heart of the planning system, further changes are also needed to national policy and guidance. The Reforms to National Planning Policy consultation sets out the government's proposed changes which will help deliver this wider change.
- 3.3 The National Planning Policy Framework (NPPF) was introduced in 2012 to consolidate the government's planning policies for England. It guides local decision makers on the government's national policy objectives, providing a framework within which locally prepared plans are produced, and national policies to be taken into account when dealing with planning applications. When a local planning authority brings forward a plan, they have a statutory duty to have regard to these national policies, and the Framework is therefore drafted with the expectation that plans will be consistent with the policies contained within it. The Framework is also a 'material consideration' in decision-taking.
- 3.4 The Reforms to National Planning Policy consultation sets out the changes that the government proposes to make immediately to the NPPF (subject to and following this consultation).
- 3.5 Specifically, this includes changes to:
  - make clear how housing figures should be derived and applied so that communities can respond to local

circumstances;

- address issues in the operation of the housing delivery and land supply tests;
- tackle problems of slow build out;
- encourage local planning authorities to support the role of community-led groups in delivering affordable housing on exception sites;
- set clearer expectations around planning for older peoples' housing;
- promote more beautiful homes, including through gentle density;
- make sure that food security considerations are factored into planning decisions that affect farmland;
- and enable new methods for demonstrating local support for onshore wind development.

3.6 Alongside these specific changes, the consultation also seeks views on a wider range of proposals, particularly focused on making sure the planning system capitalises on opportunities to support the natural environment, respond to climate change, and deliver on levelling up of economic opportunity.

3.7 Finally, the consultation also sets out the envisaged role for National Development Management Policies. These are intended to save plan-makers from having to repeat nationally important policies in their own plans, so that in theory plans can be quicker to produce and focus on locally relevant policies.

### **Consultation Document**

3.8 The proposals in the consultation document (see background papers) are designed to support the government's wider objectives of making the planning system work better for communities.

- 3.9 The proposals are summarised below and **Appendix A** to this report contains the Council's response to the 58 specific consultation questions raised.

### **How housing need should be assessed and applied**

- 3.10 The government says it will review the implications for the standard method of new household projections data based on the 2021 Census, which is due to be published in 2024. However, it is not proposing any changes to the standard method formula itself through the consultation.
- 3.11 Whilst local authorities will be expected to continue to use local housing need, assessed through the standard method, more explicit indications will be given in planning guidance of the types of local characteristics which may justify the use of an alternative method of assessing housing need.
- 3.12 Local authorities will be able to take account of constraints. The need to avoid development that would be uncharacteristically dense for the area could outweigh the requirement to meet local housing need. This calculation should be made taking into account the principles in local design guides or codes.
- 3.13 Authorities will not need to review their green belts, even if meeting housing need would be impossible without such a review. A draft NPPF revision makes it clear that local planning authorities are not required to review and alter Green Belt boundaries if this would be the only way of meeting their housing need in full.
- 3.14 Councils will be able to take past over-delivery of housing into account when assessing housing need. The draft NPPF is intended to make clear that, if permissions that have been granted exceed the provision made in the existing plan, that

surplus may be deducted from what needs to be provided in the new plan.

- 3.15 The test of 'soundness' for local plans is to be softened. The draft NPPF revisions say that plans will no longer be required to be 'justified'. Instead, the examination would assess whether the local planning authority's proposed target meets need so far as possible, takes into account other policies in the Framework, and will be effective and deliverable.
- 3.16 The government intends to retain the uplift of 35% to the assessed housing need for the 20 largest towns and cities in England. The draft NPPF revisions would require that this uplift is, 'so far as possible', met by the towns and cities concerned rather than exported to surrounding areas, except where there is voluntary cross-boundary agreement to do so.
- 3.17 The duty to co-operate is to be replaced with an as-yet-unformulated 'alignment policy'. The duty will remain in place until those provisions come into effect and 'further consultation on what should constitute the alignment policy will be undertaken'.
- 3.18 Some authorities with emerging local plans will benefit from a reduced housing land supply requirement. For the purposes of decision-making, where emerging local plans have been submitted for examination or where they have been subject to a Regulation 18 or 19 consultation which included both a policies map and proposed allocations towards meeting housing need, those authorities will benefit from a reduced housing land supply requirement. This will be a requirement to demonstrate a four-year supply of land for housing, instead of the usual five.

### **Changes to the Housing Delivery Test and 5-Year Housing Land Supply Test**

- 3.19 Authorities with an up-to-date local plan will no longer need to continually show a deliverable five-year housing land supply. In this case, 'up-to-date' means where the housing requirement as set out in strategic policies is less than five years old. The government proposes the change to take effect when it publishes the revised NPPF, 'expected in Spring 2023'.
- 3.20 Councils will no longer have to provide five-year housing land supply buffers. Currently a 5% buffer is expected in all cases as a minimum, the 10% buffer is applied when an Annual Position Statement or recently adopted plan meets specific criteria and the 20% buffer is applied as a consequence of the Housing Delivery Test, where a local planning authority delivers less than 85% of the homes it is required to.
- 3.21 Local planning authorities will be allowed to include historic oversupply in their five-year housing land supply calculations. This would be implemented by amending the Framework and planning practice guidance. The government is seeking views on what planning guidance should say about oversupply and undersupply.
- 3.22 Evidence of sufficient deliverable permissions could save councils from the most severe Housing Delivery Test sanction. The consultation document proposes to add to the test 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 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).

- 3.23 The government is considering suspension or amendment of the usual consequences of failure of the 2022 Housing Delivery Test and are seeking 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.

### **Boosting the status of Neighbourhood Plans**

- 3.24 Protection against development that conflicts with neighbourhood plans is to be extended to older such plans. The NPPF currently says that the adverse impact of allowing development that conflicts with the Neighbourhood Plan is likely to outweigh the benefits, but not if that plan is more than two years old. The government is proposing that the protection should be extended to plans that are up to five years old. It is also proposing removing tests which currently mean local planning authorities need to demonstrate a minimum housing land supply and have delivered a minimum amount in the Housing Delivery Test for Neighbourhood Plans to benefit from the protection.

### **Measures to tackle slow build-out of permissions**

- 3.25 Past 'irresponsible planning behaviour' by applicants could in the future be taken into account when applications are being determined. As examples of such applicant behaviour, the consultation 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.



- 3.26 Government data will be published on developers of sites over a certain size who fail to build out according to their commitments.
- 3.27 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).
- 3.28 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.
- 3.29 A financial penalty for developers that are building out too slowly will be consulted on separately.

### **More community-led developments**

- 3.30 To support levelling up and housing market diversification and delivery, the government wants to encourage a greater role for community-led housing groups. There are proposals to strengthen the NPPF to make sure there is more emphasis on the role that community-led development can have in supporting the provision of more locally led affordable homes.
- 3.31 The government is also seeking views on whether the definition of 'affordable housing for rent' should be amended to make it easier for organisations that are not Registered Providers - such as community-led developers - to develop new affordable homes.
- 3.32 In addition, the government would like to make it easier for community groups to bring forward exception sites for affordable housing in rural areas.

### **More homes for social rent**

- 3.33 Planning for provision of social rent homes is to be given higher priority in the NPPF.

### **More older people's housing**

- 3.34 Authorities will be expected to take particular care to ensure that they meet need for retirement housing, housing-with-care, and care homes. The government proposes to do this by adding an additional specific expectation to the NPPF.

### **More small sites for small builders**

- 3.35 Small sites can play an important role in creating much needed affordable housing, as well as supporting small and medium size (SME) builders. There is an existing policy in the NPPF to encourage the use of small sites (paragraph 69 requires local planning authorities to accommodate at least 10% of their housing requirement on sites no larger than one hectare) and the government is consulting on the effectiveness of this policy, and whether it could be strengthened.

### **The role of beauty**

- 3.36 The consultation document sets out that beauty is the benchmark that all new development should meet. Design codes prepared by local authorities with communities will ensure beautiful and well-designed development by helping to shape buildings, public space, streets, and neighbourhoods.
- 3.37 The introduction of secondary legislation, to ensure that existing permitted development rights with design or external prior approvals take into account design codes where they are in place locally, will be consulted on separately.

- 3.38 Proposed changes to the NPPF to emphasise the role of beauty and placemaking in strategic policies will further encourage beautiful development and help the government deliver on their levelling up missions set out in the Levelling Up White Paper<sup>1</sup>.
- 3.39 Authorities will also be encouraged to use planning conditions to require clear details of a scheme's design and materials. The consultation document says: 'We propose to amend the Framework to encourage local planning authorities to consider how they can ensure that planning conditions associated with applications reference clear and accurate plans and drawings which provide visual clarity about the design of development, as well as clear conditions about the use of materials where appropriate, so they can be referred to as part of the enforcement process'.

### **Embracing gentle density**

- 3.40 Building upwards in managed ways could help deliver new homes and extend existing ones that are consistent with the existing street design, contributing to 'gentle' increases in density.
- 3.41 To contribute towards this, the consultation document sets out that mansard roofs will be encouraged. The government is proposing that 'a reference to mansard roofs as an appropriate form of upward extension ... where appropriate' should be added to the NPPF.

### **Onshore wind development / energy efficiency**

- 3.42 Onshore wind power schemes will in the future be able to go ahead on sites that have not been designated in the local plan. The government says its proposed changes to the NPPF will

---

<sup>1</sup> <https://www.gov.uk/government/publications/levelling-up-the-united-kingdom>

ensure that 'local authorities have a range of routes to demonstrate their support for certain areas in their boundaries to be suitable for onshore wind'.

- 3.43 Replacing old turbines with more powerful and efficient models will be made easier. Changes to paragraphs 155 and 158 of the existing NPPF will enable the re-powering of renewable and low carbon energy schemes where planning permission is needed, providing that the impacts of any development proposal are or can be made acceptable in planning terms.
- 3.44 The NPPF will also 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**

- 3.45 Steps will be taken to prevent developers 'gaming' Biodiversity Net Gain rules by clearing habitats before submitting applications. The consultation document sets out that the government will work with Defra to review the 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.
- 3.46 Use of artificial grass by developers in new development will be clamped down on as it has no value for wildlife, with the consultation document also noting the importance of some uses of artificial grass such as on sports pitches.
- 3.47 The possibility of embedding a broad form of carbon assessment in planning policy will be explored. In particular,

the government is interested in whether effective and proportionate ways of deploying a broad carbon assessment exist, including what they should measure, what evidence could underpin them and how they may be used in a plan-making context or as a tool for assessing individual developments.

- 3.48 Policy and guidance in relation to the production of Strategic Flood Risk Assessments will be reviewed to encourage maximum coverage and more frequent updates to ensure up-to-date assessments are available for both plan preparation and decision making.

### **Recognising the food production value of farmland**

- 3.49 The NPPF will be amended to ensure that the availability of agricultural land for food production is considered when deciding what sites are most appropriate for development.

### **Plan-making**

- 3.50 Steps are being taken to maximise the number of authorities who can make use of policy changes around plan-making intended to be introduced by the NPPF revisions in Spring 2023, before the revised plan-making system set out in the Levelling Up Bill is introduced in late 2024.
- 3.51 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.

- 3.52 Authorities that do not meet the 30 June 2025 submission deadline for 'old-style' plans will need to prepare plans under the new plan-making system.
- 3.53 Authorities will be required to start work on new plans by, at the latest, five years after adoption of their previous plan, and to adopt that new plan within 30 months.
- 3.54 Plans that will become more than five years old during the first 30 months of the new system will continue to be considered 'up-to-date' for decision-making purposes for 30 months after the new system starts.
- 3.55 Authorities will no longer be able to prepare supplementary planning documents (SPDs) in the revised planning system. Instead, they will be able to prepare Supplementary Plans, which will be afforded the same weight as a local plan or minerals and waste plan. The government proposes that, when the new system comes into force (expected late 2024), existing SPDs will remain in force for a time-bound period; until the local planning authority is required to adopt a new-style plan. Current SPDs will automatically cease to have effect at the point at which authorities are required to have a new-style plan in place.

### **National Development Management Policies (NDMPs)**

- 3.56 There is intended to be a consultation later this year (2023) on how National Development Management Policies (NDMPs) are implemented. They will cover planning considerations that apply regularly in decision-making across England, 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.

- 3.57 The starting point for creating NDMPs would be existing parts of the NPPF that apply to decision-making. 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'. Indicative examples of 'gaps' where national policy is silent on common decision-making issues are carbon reduction in new developments; allotments; and housing in town centres and built-up areas.
- 3.58 NDMPs will cover only matters that have a direct bearing on the determination of planning applications. Other key principles 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.

### **The Council's response to the consultation**

- 3.59 **Appendix A** to this report contains the Council's response to the 58 specific consultation questions raised. East Herts Council welcomes the opportunity to comment on the proposed reforms to national planning policy. The Council is generally supportive of a number of the proposed changes, including the prioritisation of a plan-led system.
- 3.60 The Council would, however, like to see further clarity and additional, more detailed guidance on a range of matters. It should also be noted that whilst wide-ranging in its scope, the consultation fails to cover the following important areas:
- Lack of guidance and clarity on the proposed 'alignment

- policy' and how this replaces the Duty to Co-operate.
- No information on strategic, cross-boundary planning and Joint Strategic Plans.
  - No information on resources, skills, and positive promotion of planning to improve resilience in the sector.
  - No information on planning fees and helping Councils to modernise planning functions.
  - No detail about strengthening enforcement powers.
  - No information on how PINS will support the successful implementation of the new plan making system, including how they will be held to account over poor management of examinations and appeal decisions which undermine recently adopted local plans.

3.61 The transitional arrangements for local plans under the future system are considered particularly important and the proposed approach should also be applied to local plans that become more than five years old between the publication of this consultation and the start of the new system in late 2024.

### **Next Steps**

3.62 The Council will submit the response in **Appendix A** to the Department for Levelling Up, Housing, and Communities, before the consultation closes on 2 March 2023.



## **4.0 Options**

4.1 The Council could choose not to respond to the consultation.

## **5.0 Risks**

5.1 Not responding to the consultation will mean that the Council misses the opportunity to respond to the government in relation to key concerns about the proposed planning reforms.

## **6.0 Implications/Consultations**

6.1 This report sets out the Council's response to the government's consultation on reforms to national planning policy.

### **Community Safety**

No

### **Data Protection**

No

### **Equalities**

No

### **Environmental Sustainability**

No

### **Financial**

There are no financial implications of responding to the consultation.

### **Health and Safety**

No

## **Human Resources**

No

## **Human Rights**

No

## **Legal**

No

## **Specific Wards**

All

### **7.0 Background papers, appendices and other relevant material**

7.1 Levelling-up and Regeneration Bill: reforms to national planning policy - <https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy>

7.2 National Planning Policy Framework: draft text for consultation - <https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy>

### **Contact Member**

Councillor Jan Goodeve – Executive Member for Planning and Growth  
[jan.goodeve@eastherts.gov.uk](mailto:jan.goodeve@eastherts.gov.uk)

### **Contact Officer**

Sara Saunders – Head of Planning and Building Control, Tel: 01992 531656. [sara.saunders@eastherts.gov.uk](mailto:sara.saunders@eastherts.gov.uk)

**Report Author**

Claire Sime – Service Manager (Planning Policy, Design and Conservation). Tel: 01992 531626. [claire.sime@eastherts.gov.uk](mailto:claire.sime@eastherts.gov.uk)