

## National Planning Changes

Date: 30<sup>th</sup> January 2024

Report of: Chief Planning Officer

Report to: Development Plan Panel

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

### Brief summary

On 19 December 2023, the Government published a revised National Planning Policy Framework (NPPF) document. On 26 October the Levelling Up and Regeneration Act (LURA) became law.

The changes to the NPPF are mainly focussed on housing delivery. The changes proposed through the LURA are wide ranging and include: new design codes, infrastructure levy, introducing National Development Management policies, removing the Duty to Cooperate, introducing Environmental Outcome Reports as a replacement for Strategic Environmental Assessment and introducing street votes.

Members are asked to note the report.

### Recommendations

- a) That members note the contents of this report

### What is this report about?

- 1 This report is about changes to the National Planning Policy Framework (NPPF) which was published on 19 December 2023 and changes arising from the Levelling Up and Regeneration Act (LURA) which was enacted on 26 October 2023. There were also some wider changes announced at the same time e.g. to Planning Policy for Travellers guidance.
- 2 The NPPF sets out the Government's economic, environmental and social planning policies for England. The policies set out in the framework apply to the preparation of local and neighbourhood plans and to decisions on planning applications. The NPPF covers a wide range of topics including: housing, business, economic development, transport and the natural environment.
- 3 The Council, in consultation with members of DPP, responded to the consultation draft of the NPPF in February 2023, raising concerns about: changes to plan-making, the likely delivery of plans within 30 months and the manner in which communities were to be engaged in the process. DPP discussed plan-making reforms at its meeting on 26 September 2023.

- 4 The Levelling Up and Regeneration Act (LURA) became law from 26 October 2023. The LURA, alongside other planning legislation, sets the legal framework within which the planning system operates. The changes proposed through the LURA are wide ranging and include: new design codes, infrastructure levy, introducing National Development Management policies, removing the Duty to Cooperate, introducing Environmental Outcome Reports as a replacement for Strategic Environmental Assessment and introducing street votes.

## **What impact will this proposal have?**

### National Planning Policy Framework

- 5 The NPPF amendments focus on housing delivery, but there are also some changes to details on plan-making, design, agricultural land, energy efficiency and implementation. The key points are summarised below and it is noted where they align with the existing Local Plan, Leeds Local Plan Update (LPU) and Leeds Local Plan 2040 (LLP2040). Some of these are not changes to the NPPF but cover proposed changes in the consultation draft that have subsequently not been adopted by the Government.

### Plan Making

- 6 One of the most significant proposed changes in the consultation draft was the removal of the requirement that local plans needed to be “justified” and based on evidence alongside reasonable alternatives. The Council in its response opposed this and the Government has changed its mind, leaving the soundness tests unchanged.
- 7 The guidance introduces a new strategic objective to “*ensure outcomes support beauty and placemaking*”. This aligns with the direction of travel of LPU policies.

### Delivering a sufficient supply of homes

- 8 Whilst the NPPF retains the need for planning to “*support the Government’s objective of significantly boosting the supply of homes*” it adds that “*the overall aim should be to meet as much of an area’s identified housing need as possible...*”. This is being seen by some commentators as a softening of the Government’s approach to meet its overall targets for housing growth. Helpfully the guidance also notes that the overall aim should be for “*an appropriate mix of housing types for the local community.*” This aligns with the approach that the Council is taking to LLP2040.
- 9 The approach to a standard method for assessing housing delivery has been retained and forms the starting point for the consideration of housing needs. However, the standard method incorporates an uplift into the NPPF which had previously been advised in National Planning Practice Guidance, which applies to certain cities and urban centres. This uplift should be accommodated within those cities and urban centres themselves except where there are voluntary cross boundary redistribution agreements in place, or where it would conflict with the policies in the Framework. This would increase housing targets in Leeds by 35% and will be considered through LLP2040.
- 10 There is now no requirement to maintain a 5-year housing land supply if a plan is under 5 years old and the plan identified a 5-year supply at examination. For Leeds the Council can demonstrate a 5-year housing land supply and it is within 5 years of plan adoption, but from July 2024 onwards there will be a need to ensure that this 5-year supply is maintained. In addition, and in order to support progression in plan-making, the NPPF also notes that for LPAs with a local plan that is in production (i.e. Regulation 18 stage or beyond) with allocations the 5-year

supply requirement is made easier by only needing to identify a minimum of 4 years' worth of housing. This is set out in para 226, but as written is not clear; since 4 years' worth of housing, when set against a 4 year housing target would not necessarily be any easier to demonstrate than 5 years' worth of housing against a 5 year housing target. An easier test would be a requirement to meet 4 years' worth of a 5 year housing target, but that is not what the NPPF says and it may be that further clarity emerges on this.

- 11 The Government had previously suggested that historic over-delivery of housing should be used as a reason for not meeting needs in full. This has been abandoned.

### Green Belt

- 12 The NPPF makes minor amendments to the Green Belt section and states that *"Once established, there is no requirement for Green Belt boundaries to be reviewed or changed when plans are being prepared or updated. Authorities may choose to review and alter Green Belt boundaries where exceptional circumstances are fully evidenced and justified, in which case proposals for changes should be made only through the plan-making process."* In effect this does not materially change the previous intent of the original NPPF.

### Design and Character

- 13 Another of the most significant proposed changes in the consultation draft was that local plans need not meet needs in full *"where meeting need in full would mean building at densities significantly out of character with the existing area"*. Again, the Council raised concerns about this, its deliverability in practice and noted that Design Coding would be the means through which such a balance would be reached. This has now been abandoned and instead changes are made to general density policies in existing urban areas, where the new guidance states: *"significant uplifts in the average density of residential development may be inappropriate if the resulting built form would be wholly out of character with the existing area. Such circumstances should be evidenced through an authority-wide design code which is adopted or will be adopted as part of the development plan."* The City Council is preparing a Design Code.

### Conclusions

- 14 The changes in the NPPF are enacted from 20 December 2023. In sum the changes are not as radical as they had been in the consultation version of the guidance. The changes are fairly limited and there is the prospect of more changes arising from further consultation that the Government held in 2023 on plan-making.
- 15 It is noted that there are few changes to the NPPF on climate change policies and the role that the planning system plays in mitigating and adapting to climate change and the weight to be given to this. This has been a point made to the Government by the Council through various consultations. The difficulty this creates is one of certainty for local authorities who choose to adopt locally specific climate change policies that are not framed by the NPPF. One such example is noted in a report on the Leeds Local Plan Update elsewhere on the agenda about a recent Written Ministerial Statement on energy efficiency. Due to a lack of clarity from the NPPF the Government has found it necessary to supplement its national guidance through this route.

### Other measures and announcements

16 The Government has also announced that other measures, which had been proposed as a part of planning system changes, remain paused at the current time pending further consideration. These measures relate to:

- a) Build out rates of development
- b) A review of the statutory consultee system due to worries about “delays and procrastination” of the Government’s statutory bodies such as National Highways, Natural England, Historic England and the Environment Agency
- c) Increasing focus on social housing
- d) Changing the way that the NPPF treats the consideration of embodied carbon in material

17 On 19 December Michael Gove also made some significant wider planning announcements:

- a) Measures to tackle poor performance on planning in local authorities. First, the Government would publish league tables, ranking planning authorities by performance – showing speed of response, level of approvals, and delivery of targets
- b) In relation to the 2022 Housing Delivery Test 20 local authorities are subject to the presumption in favour of sustainable development as a consequence of poor housing delivery and are to be taken into special measures on the basis of poor performance in housing delivery
- c) The Secretary of State also placed two local authorities (Fareham and Chorley) in special measures where they were stripped of their planning powers because they had had too many decisions overturned on appeal
- d) A further 5 councils fell under the threshold of quality decisions and are on notice but not in special measures
- e) The Secretary of State also threatened 7 local authorities with special measures as a result of slow plan making process, where they have either struggled to pull a plan together or withdrawn an advanced plan
- f) The Secretary of State also said that Government would clamp down on extension of time agreements and be required to determine more applications within the statutory 13 week period. In a WMS which accompanied the announcements the Minister said he would seek to constrain extension of time agreements in due course.

#### Levelling Up and Regeneration Act

18 The main changes that impact upon strategic planning include:

- a) Local planning authorities will be required to have a design code in place covering their entire areas – this would fit well with the direction of travel of LPU1 and progress is being made on scoping what this would look like for the District. Members were updated on this at a recent workshop event in December.
- b) A new levy will replace section 106 planning obligations and the Community Infrastructure Levy. This is a significant and wholesale change for which Government has identified a need for a transition and pilot authorities to test the new approach. In the meantime, the existing system remains.
- c) A new requirement will be placed on local authorities to prepare infrastructure delivery strategies to outline how they intend to spend the levy. This aligns with the current approach to preparing Infrastructure Funding Statements which the Council does annually.
- d) The scope of local plans will be limited to ‘locally specific’ matters, with ‘issues that apply in most areas’ to be covered by a new suite of national development management policies (NDMP). The guidance notes that general policies on issues that apply in most areas (such as general heritage protection) will be set out nationally and contained in a suite of NDMPs, which will have the same weight as plans so that they are fully taken into account in decisions.

Local plans will not be allowed to change them. The NDMPs will not be subject to parliamentary approval, which was a suggestion by the House of Lords, but they will be consulted on. It remains to be seen what shape and form these take and how specific they are.

- e) The Duty to Cooperate will be replaced with an alignment test, but there is no detail on what this is or how it will operate. In the meantime Leeds and the other Leeds City Region authorities continue to meet on a bi-monthly basis to discuss strategic matters and feed into the Combined Authorities Heads of Planning meeting.
- f) EU processes on environmental impact assessment (EIA) and strategic environmental assessment (SEA) will be replaced by 'environmental outcomes reports', but there is limited detail on how these will work in practice at the current time.
- g) Instead of a neighbourhood plan some areas may use a new neighbourhood planning tool called a 'neighbourhood priorities statement', providing communities with a simpler and more accessible way to set out their key priorities and preferences for their local areas. This has been tested in Leeds and it is hoped will encourage communities to engage on specific issues and not daunted by the challenges of preparing wide ranging documents. In its testing in Leeds it was particularly noted that this would be a helpful way to encourage non-parished inner city areas to engage more on neighbourhood planning.
- h) The compulsory purchase order system will be changed and the accompanying notes of the legislation state that this would empower local decision-making and improve transparency regarding local authorities' power to acquire brownfield land compulsorily for regeneration in their area

19 There is also an emphasis on the speeding up of the planning application process and the delivery of new development with changes of relevance to Development Management. These include:

- a) New requirement for developers to submit commencement notices to LPA's specifying the date that development is expected to start. Failure to serve a notice is an offence liable to a summary conviction of up to £1000.
- b) Completion notices – introduces the power to issue completion notices if a development is being built out 'unreasonably slowly'.
- c) The power to decline to determine planning applications is broadened out to include cases of earlier non-implementation or unreasonably slow build out.
- d) The power to impose mandatory conditions on planning permissions for specified residential developments relating to the provision of annual development progress reports.
- e) A change to the statutory test for the determination of planning applications placing a greater emphasis on compliance with the development plan and national development management planning policies and only to depart from such policy if material planning considerations strongly indicate otherwise.
- f) Introduction of a new section 73B to the Town and Country Planning Act 1990 (TCPA 1990) to make "non-substantial changes" to planning permissions. This can include making changes to the description of development and the conditions, so long as these are not "substantially different from that of the existing permission". This will introduce greater flexibility for applicants as it will plug the gap between wholly new planning permissions and what are often termed "minor material amendments" under section 73 of the TCPA.
- g) Time limits for breaches of planning control - the time limit for immunity from enforcement against breaches of planning control in England will become 10 years (currently 4 years) for enforcement of building operations and unauthorised change of use of a building to a dwelling.
- h) Enforcement warning notices are a new discretionary measure as a pre-step before enforcement proceedings in those circumstances where a planning application is encouraged to be submitted to avoid the need to take other enforcement action.

20 Not all of this comes into force immediately and the majority of proposals rely on secondary legislation, which is not set out. For some provisions e.g. measures to put more pressure on developers to build out schemes that they have for planning permission for more quickly, have a timetable for secondary legislation, but most do not.

### **Planning for Travellers**

21 Changes to Planning Policy for Travellers Sites have been made which change the definition of Travellers as with those of travelling background not just those who are currently traveling. This is due to the previous definition being successfully challenged in the High Court. This is to be welcomed, as the Council had previously written to Government expressing concerns at the changed definition.

### **How does this proposal impact the three pillars of the Best City Ambition?**

Health and Wellbeing       Inclusive Growth       Zero Carbon

22 The NPPF sets national policy within which the Council must prepare its Local Plan. The NPPF sets out policies which are relevant to each of the Council's three pillars and the Council's Local Plan provides weight to them depending on their local importance.

### **What consultation and engagement has taken place?**

Wards affected:

Have ward members been consulted?       Yes       No

23 This report is to be noted. No Council consultation has taken place.

### **What are the resource implications?**

24 There are no specific resource implications to this report.

### **What are the key risks and how are they being managed?**

25 No issues of risk are identified within the recommendations in this report. Changes to the NPPF may raise a number of specific risks that will be dealt with on a case by case basis, but there are no significant risks arising from the amended NPPF because the Council has worked to pre-empt these changes and in many cases e.g. on design and housing numbers, they fit with how the Council's approach has been developed.

### **What are the legal implications?**

26 The changes to the planning system will raise a number of specific legal issues including a need to amend the material weight given to specific parts of national policy on plan-making and decision making. These matters will be assessed on a case by case basis to align plan-making and decision-making with the amendments to the NPPF to ensure sound legal decision making.

## **Options, timescales and measuring success**

### **What other options were considered?**

27 There are no options within this report.

### **How will success be measured?**

28 Success will be measured through the adoption of Local Plan documents in line with the revised NPPF and determination of planning applications.

**What is the timetable and who will be responsible for implementation?**

29 The NPPF changes apply from 19 December 2023. The Planning and Sustainable Development Service will be responsible for their implementation.

**Appendices**

- None

**Background papers**

- None