

National Planning Policy Framework (NPPF) - Consultation proposals

Written submission by the District Councils' Network

April 2018

The DCN

The District Councils' Network (DCN) is a cross-party member led network of 200 district councils. We are a Special Interest Group of the Local Government Association (LGA), and provide a single voice for district councils within the Local Government Association.

District councils in England deliver 86 out of 137 essential local government services to over 22 million people - 40% of the population - and cover 68% of the country by area.

District councils have a proven track record of building better lives and stronger economies in the areas that they serve. Districts protect and enhance quality of life by safeguarding our environment, promoting public health and leisure, whilst creating attractive places to live, raise families and build a stronger economy. By tackling homelessness and promoting wellbeing, district councils ensure no one gets left behind by addressing the complex needs of today whilst attempting to prevent the social problems of tomorrow

General comments

The DCN welcome the opportunity to comment on the revised National Planning Policy Framework (NPPF). The content of this revised document is generally welcome and is considered to follow a more logical structure than the current document. The inclusion of the 'plan making' and 'decision taking' upfront, followed by the 'theme' chapters is particularly supported.

The DCN does, however, wish to re-inforce the comments made, both directly to ministers in person and in previous consultation responses, that:

- There needs to be enhanced powers of compulsory purchase available to Local Authorities to enable them to purchase, at pre-scheme rates, sites which are not

- being delivered to time (or at all) and arrange the build-out of the sites directly, or through parcelling out to SME developers;
- The recognition that allocations made in Local Plans are, in effect, “contracts” for delivery within a defined time-frame; non-delivery should result in such sites being de-allocated, and alternative sites coming forward.

1. Introduction

Q1 Do you have any comment on the text of Chapter 1?

It is disappointing that the Government has not taken the opportunity, despite previous representations from a number of parties (including the DCN in its response to *Planning for the Right Homes in the Right Places* last year), to include its planning policies for Traveller sites and waste within the draft revised NPPF. As statements of national planning policy, it is unclear why the revised NPPF should not include the contents of these documents too. We do not believe that the wish to avoid extending the length of the NPPF is not sufficient to outweigh the benefits of consolidation; there is no reason why partial reviews of the NPPF could not take place in the future if this is a concern of Government.

It is helpful that paragraph 6 states that Written Ministerial Statements and endorsed recommendations of the National Infrastructure Commission may be material as statements of Government policy.

2. Achieving sustainable development

Q2) Do you agree with the changes to the sustainable development objectives and the presumption in favour of sustainable development?

It is noted that the reference to sustainability being the ‘golden thread’ is not included in the draft revised NPPF. This is welcomed as it reinforces the legal primacy of the development plan in decision-taking (provided the plan is not out of date or silent on the matter in question).

Paragraph 9 marks a subtle but significant departure from the current approach to considering sustainable development. It makes it clear that economic, social and environmental objectives ‘*are not criteria against which every decision can or should be judged*’; rather, they are part of the conversation that needs to take place when deciding where to direct development. The DCN supports this helpful change and this should enable Councils to make decisions that best reflect local circumstances, character, needs and opportunities.

Footnote 7 of paragraph 11 is worded in terms of being a finite list of areas or assets of particular importance, rather than a set of examples as in the current NPPF. On balance, the DCN considers this helpful, as there has been much inquiry and examination time spent debating whether particular local circumstances meet the “test” of the current Footnote 9. Part d) ii) of paragraph 11 should enable appropriate consideration to be taken of the potential impact of development on any locally significant (for example) biodiversity, landscape or heritage assets.

The first part of part d) of paragraph 11 refers to policies...“*which are most important for determining the application are out of date...*”. Whilst the difficulties in this area are

acknowledged (each case must be determined on its individual merits), this proposed wording is likely to be the subject of considerable debate in the context of individual applications, appeals and High Court challenges, reducing certainty.

Q3) Do you agree that the core principles section should be deleted, given its content has been retained and moved to other appropriate parts of the Framework?

Whilst the 'Core Principles' are generally (though not fully) incorporated now within the text of individual theme sections, it would be useful if these could be highlighted better – for example, through the use of text boxes at the beginning of each chapter.

Q4) Do you have any other comments on the text of Chapter 2, including the approach to providing additional certainty for neighbourhood plans in some circumstances?

The DCN welcomes greater clarity on Neighbourhood Planning

3. Plan-making

Q5 Do you agree with the further changes proposed to the tests of soundness, and to the other changes of policy in this chapter that have not already been consulted on?

The changes to the tests of soundness are generally welcomed. However, a few matters relating to the detailed text would benefit from further clarification:

(a) Positively prepared:

- There appears to be an inconsistency between the wording of paragraphs 11 and 36a. This test of soundness refers to meeting '*as much as possible*' of local housing need as a minimum. This is a very ambiguous term that is likely to be open to different interpretations. It is suggested that a clearer reference would relate to the use of housing need as the '*starting point*' or to more directly reflect the wording in paragraph 11
- Should the reference to '*agreements with other authorities*' be amended to refer explicitly to Statements of Common Ground, or is it intentionally flexible to enable other appropriate mechanisms to be used? The latter interpretation would be supported by the DCN.

(b) Justified:

- The reference to Local Plans needing to be '*an appropriate strategy*' rather than '*the most appropriate strategy*' for their area is enthusiastically welcomed by virtually every single DCN member authority. This should reduce the scope for debate at examination of the relative pros and cons of individual sites and enable LPAs, in consultation with their communities, to exercise greater local choice regarding the content of their plans. Paragraph 35 (in relation to sustainability appraisal), however, should be altered to reflect this change too.

(c) Effective:

- Reference should be to '*Statements of Common Ground*' (plural), as in some areas it may be appropriate to be signatory to more than one document.
- The DCN notes the inclusion of reference to these Statements of Common Ground within the soundness tests from Government that the "duty to co-operate" is now a "duty to agree", and that difficult cross boundary issues need to be clearly addressed rather than deferred. The DCN supports this message, albeit that there

must remain some flexibility where there are particular local issues which may mean that, despite the very best efforts of the plan-making local authority, agreement simply has not been able to be reached in a timely way. It will be very important that there is no perception any other co-operation body could in effect hold a power of “veto” over the authority. In such cases, pragmatism from the Inspector (such as requiring an early Local Plan review) will remain an important tool to avoid delays in the adoption of much-needed and up-to-date Local Plans.

Paragraph 37 refers to the tests of soundness being applied in a ‘*proportionate way*.’ Whilst the intention of this phrase if helpful, it is unclear what this would mean in practice. An alternative (better) phrase might be ‘*pragmatic way*’, which could help address the potential situation raised in the bullet point immediately above.

Q6 Do you have any other comments on the text of Chapter 3?

The continuing reference to the planning system being genuinely plan-led is welcomed; with the relocation of the ‘Plan-making’ section from the back to the front of the document helpfully reinforcing this principle. Other comments on specific sections of this chapter are as follows:

Strategic policies

- The DCN is pleased to note that whilst there is clear support for the preparation of joint strategic plans, there appears to be recognition that these are not necessarily the most appropriate mechanism to address cross boundary matters in all areas. The new Statements of Common Ground should provide an alternative and sufficiently robust mechanism for areas with less complex cross-boundary relationships, provided these are prepared on an appropriate planning geography.
- The text with this section would benefit from some additional wording to clearly distinguish between strategic *plans* and strategic *policies*. Whilst both are defined in the glossary, it would be helpful for the main text to make clear that strategic policies don’t necessarily have to be addressed in a joint strategic plan, and similarly that if a joint strategic plan is prepared, it does not necessarily have to include all strategic policies. Rather it should be the role of the new Statements of Common Ground to set out the most appropriate way to address these issues, and establish the scope of any joint strategic plans, based on local circumstances.
- The text of both the NPPF and accompanying PPG are silent on the status that can be accorded to non-statutory joint strategic plans. Whilst it is acknowledged that they can be accorded less weight than statutory documents, it would be helpful for those authorities who have already made significant progress on such plans (i.e. Leicestershire) to have some formal recognition of their role. Whilst this might not be appropriate for the NPPF, it would be a helpful inclusion within the PPG.
- The clarification in paragraph 22 that strategic policies should look ahead over a minimum 15 year period from adoption is welcomed. Paragraph 22 also states that strategic policies should look ahead over a minimum 15 year period. With regards to calculating housing need the draft PPG states:

“How can plan-making authorities apply the method to the plan period?”

The method can be applied to the whole plan period. However, local planning authorities are required to review their plans every five years. This will ensure that plans are based on the most up-to-date and accurate available projections.”

Step 1 and Step 3 b. of the guidance refer to a 10-year period. Clarification is needed as to whether LPAs should be calculating their housing needs over a 10-year period, a 15-year period, the whole plan period (often 20 years), or whether the decision should be left to each LPA to be determined. The time period over which the need is calculated will have an impact on the annual housing requirement, which could result in pressure to choose the option which would result in the lowest figure. For example, calculated over the 10 years 2016-2026, South Somerset's housing requirement equates to 734 dpa; however, if it is calculated over the 20 years 2016-2036 it equates to 679 dpa.

- The terminology relating to the 5 year reviews of plans in paragraph 23 is open to different interpretations. It can be read as:
 - a) a physical review that leads to a new Local Plan; or
 - b) a statement setting out the authority's view on whether the plan is up to date or not.

Whilst the draft PPG (page 49) provides the clarity required, this wording needs to be better reflected in the NPPF itself. With regard to (b), any such statement should set out which individual policies (if any) need to be reviewed, or runs the risk of potentially undermining the whole plan.

- The standard methodology set out in the PPG for calculating local housing need appears unchanged from that previously consulted on. The DCN does not wish to repeat its previous feedback on this approach, but is concerned that if there are to be three new data releases over each two-year period, and the wording of the final sentence of paragraph 23 remains unchanged, it has the potential to result in incremental planning through pressure for constant partial reviews, rather than the creation of robust Local Plans which are essential to the operation of a strong plan-led system.
- The text in paragraph 25 that refers to strategic policies being underpinned by 'adequate but proportionate' evidence is warmly welcomed.

Local policies

- The clear statement in paragraph 31 that '*Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies*' is helpful.

4. Decision-making

- Q7) *The revised draft Framework expects all viability assessments to be made publicly*
Q10) *Do you have any comments on the text of Chapter 4?*

The principle of making all viability assessments publicly available is strongly supported by the DCN. Very exceptionally, as set out in the draft PPG, there may be a case for redacting certain information (the absolute bare minimum) publicly, and potential examples (without being proscriptive or complete) could usefully be set out in the PPG.

Page 11 of the draft PPG sets out some of the information that should be published publicly as part of a viability assessment (such as Gross Development Value etc). It would be extremely useful if the PPG could mandate that this should normally also include the price paid for the land (or option price, or similar), because if a viability assessment has been submitted, it is because the developer is claiming it cannot meet the policy requirements of the Local Plan without some relaxation.

The PPG and (if necessary) legislation should also make clear that, in the light of viability assessments being proposed only exceptionally, the costs of a LPA critiquing a VA (which can be considerable in some cases if external expertise is needed) should be able to be recharged to the applicant.

Q8) Would it be helpful for national planning guidance to go further and set out the circumstances in which viability assessment to accompany planning applications would be acceptable?

Whilst the DCN strongly supports the principle that viability assessments should not be necessary for most applications on allocated sites, it would be helpful for the PPG to set out further details of some of the circumstances when a VA *might* be appropriate. That way there would be less room for debate, particularly if the Local Plan has already identified certain sites or local circumstances that may justify the submission of a VA. It is important, however, that such a list does not become exclusive – reasons will vary on a case-by-case basis, and may well differ according to local circumstances, policy requirements, and/or the type of development proposed or potential site specific impacts/constraints.

Q9) What would be the benefits of going further and mandating the use of review mechanisms to capture increases in the value of a large or multi-phased development?

The reasoning set out in the draft PPG captures the main points. The flexibility of S106s is useful in this regard but it is important to note that CIL is less flexible – there may be circumstances where an authority would prefer to be “flexible” on CIL-funded infrastructure than S106-funded infrastructure, but cannot do this due to the way CIL operates.

One consequence of a review system, however, might be an argument from developers that it should also operate in reverse, so if values drop, affordable housing levels (say) should also be reduced or the tenure split re-negotiated. The PPG text stating that the realisation of risk is not sufficient grounds to trigger a review is therefore very helpful in this regard. The last thing that DCN members would wish to see under the revised system is a return to the days of renegotiations that were experienced under the (now former) Section 106BA powers, when there were many examples of this system being abused by some landowners and developers (getting a policy-compliant permission granted, and then rapidly seeking a re-negotiation/reduction of some/all affordable housing using Section 106BA).

Q10) Do you have any comments on the text of Chapter 4?

The encouragement of greater and more effective pre-application engagement, including with statutory consultees, in paragraphs 40-47, is welcomed by the DCN.

The approach to prematurity (paragraphs 50 and 51) remains too restrictive. Many DCN members have experience of multiple (unallocated) smaller sites coming forward, thus reducing housebuilders’ incentive to deliver the larger allocated sites. There should be greater powers to refuse speculative and inappropriate additional sites when a Local Plan is being progressed, particularly when they have been submitted opportunistically (i.e. they are not emerging allocated sites). In particular, effective infrastructure planning of such sites can be very difficult.

5. Delivering a sufficient supply of homes

Q11 what are your views on the most appropriate combination of policy requirements to ensure that a suitable proportion of land for homes comes forward as small or medium sized sites?

The DCN's members acknowledge that it is appropriate to strike a balance between larger strategic sites (as helpfully encouraged in paragraph 73 of the NPPF) and small to medium sized sites, to support both choice and supply within the market. However the NPPF needs to be clear whether the reference to 20% relates to *supply* (as indicated previously), or allocated *sites* (as seems to be indicated by the text in paragraph 69 of the draft NPPF). Serious concerns are raised that the latter is not achievable in many areas (at least without artificial sub-division of sites), so the DCN would prefer the former. An appropriate and pragmatic balance (based on local evidence) between small (10 dwellings or below) and medium (say 11-100 dwellings) sized sites should be permitted in Local Plans.

It is also noted that the percentage figure has increased from the Housing White Paper, which referred to *'at least 10% of sites.'* This previous wording is considered to be preferable, as it sets a clear and reasonable expectation for Councils to include smaller sites as part of their Local Plans, whilst allowing each area to reflect local circumstances. This needs to be considered in the context of the proposed policy on entry-level exception sites (paragraph 72), which if implemented, would likely increase the numbers of (unallocated) smaller sites coming forward in many areas anyway. The DCN supports the view that brownfield registers provide a further source of potential supply.

There is a conflict between the terms 'small sites' and 'major development'. Major development is expressly defined as development of 10 or more homes or where a site has an area of 0.5 ha or more. But Paragraph 69 seems to be defining a 'small site' as a site of 0.5ha (or less). Should the definition of a 'small site' be revised to a site providing 9 or fewer homes or having a site area of 0.49 ha or less? In this scenario very careful site area measuring would be required.

Q12 Do you agree with the application of the presumption in favour of sustainable development where delivery is below 75% of the housing required from 2020?

Some DCN members remain concerned about the Housing Delivery Test as a principle, as well as to the application of the presumption in favour of sustainable development referred to in the question above (see the DCN's previous consultation responses on this matter). These concerns are particularly strong in areas whose local housing need figure (generated by the new standard methodology) significantly exceeds that within their current adopted Local Plan and these are either nearly or over five years in age.

The HDT measure is intended to "penalise" local planning authorities that are failing to deliver housing at certain thresholds but without considering the full range of circumstances. Both the HDT and five-year housing land supply work on the assumption that increasing the supply of housing will directly increase the rate of delivery of housing. Many DCN members have compelling evidence that increased planning commitments for residential development in recent years have resulted in only modest increases in housing delivery, and not the significant increases in delivery that are sought. Furthermore, local authorities do not control the local housing market, or indeed housing build out rates (except on those sites where the local authority is the developer). **It is re-iterated once again that many LPAs are not housebuilders/developers (other than at a fairly small scale) and therefore to penalise LPAs over something they have little control over is fundamentally unfair.**

The presumption in favour of sustainable development where delivery is below 75% of housing required is unlikely to have major implications for many authorities; if delivery in their areas is low, they are already likely to be adding 20% to housing need, and thus already facing the presumption in favour of sustainable development. As above, however, it is not considered helpful or fair to “penalise” authorities when the reasons for poor delivery are almost entirely out of their control (e.g. lack of market competition, difficulty accessing development funding at sensible rates, labour and materials shortages etc).

It would have been better for the final revisions to the NPPF to await the recommendations of the Letwin Review, as this is attempting to understand the reasons between the gap between permissions and completions. As noted by Sir Oliver in his initial thoughts on the subject (and also by many other planning and housing scholars, authors and practitioners), simply increasing the supply/delivery of housing alone is unlikely to have a significant effect on the (worrying and growing) affordability gap in anything other than the long term.

Q13 Do you agree with the new policy on exception sites for entry-level homes?

The principle of taking a flexible approach to sites that deliver a high proportion of affordable housing in areas where this is otherwise hard to achieve is welcomed, as it allows flexibility to reflect specific local needs and address potential site viability issues. However, DCN members have considerable concern about how this proposal would work and its implications. As stated in many authorities’ responses to the Housing White Paper consultation, this policy would, in effect, severely weaken the plan-led approach and risk applications on an unknown number of unallocated sites being made. If LPAs have made sufficient allocations in their Local Plan, and have a five-year land supply on adoption, why should their communities be “threatened” with the uncertainty of significant further unplanned development proposals, the infrastructure planning for which (for example) is extremely difficult/impossible to plan for?

A second point – again made by the DCN and many DCN members individually in previous consultation responses – is that this policy seriously threatens the very future of traditional affordable housing “exception” sites. These have tended to be 100% affordable and/or social rented dwellings (or perhaps with some “enabling” market dwellings), helping to meet local needs and are retained as affordable housing stock in perpetuity. But with the proposed new “entry-level” homes allowed on unallocated sites (which would be of higher value than affordable rented properties), the main source of supply for “exception” sites would be highly likely to reduce significantly, thus further reducing the opportunities to deliver affordable rented dwellings.

On a matter of detail, paragraph 72 needs to clarify what is meant by such sites offering a ‘*high proportion*’ of entry level homes, or refer to this being defined within Local Plans, as this is likely to be interpreted differently by Councils, local communities and developers. Furthermore, the definition of ‘entry level homes’ set out within the Glossary is not sufficiently clear (see comments below). If the new approach is to be retained, despite the DCN’s concerns, this needs to be tightened, with a clear requirement regarding how they can be retained in perpetuity.

Q14 Do you have any other comments on the text of Chapter 5?

The inclusion of the housing chapter as the first of the topic ‘themes’ is logical – and reflects the importance being accorded by Government to the delivery of new homes.

The specific support given for allocating strategic scale development (para 73) is welcomed and reflects the views of many members that large-scale sites often provide the greatest opportunities for the provision of new infrastructure alongside new homes.

The ability for Councils to set conditions that limit the length of time planning permission lasts for, if they wish to ensure faster delivery of sites is generally welcomed (paragraph 78). However, this needs to be supported by measures that dissuade developers from overcoming this approach purely through more regular renewal applications, or delaying the signing of associated S106 agreements. The reference within this paragraph to LPAs being able to ‘*assess why any earlier grant of planning permission for a similar development the same site did not start*’ requires greater teeth if it is to be an effective deterrent to potential land-banking. It is suggested that the text be reworded to make clear this should be a ‘*material planning consideration*’. The conclusions of the current Letwin Review will be relevant to the consideration of these wider housing delivery issues, and a further refinement of the NPPF may be necessary at that point.

The specific support for an increase in densities for sites within town centres and near transport hubs is welcomed, provided such development also accords with the principles of good design set out in Chapter 12.

Also welcomed is the fact that the PPG now refers to the windfall situation being the current five-year period, meaning that there is now the ability to take them into account over the whole lifetime of the plan.

DCN members are very pleased to see, in page 14 of the draft PPG, that new student accommodation and new C2 residential accommodation should be included towards the overall housing requirement.

A number of concerns, however, have been raised by the DCN membership regarding this section. These are summarised below:

- The change to bring the thresholds for affordable housing into line with the definition of major development (paragraph 64) is welcomed by some DCN members. However, many are unhappy with this proposed policy change; those councils (particularly rural authorities, such as North Devon) Council, who see significant proportion of their development on small sites (below 10 dwellings) naturally obtain much of their affordable housing delivery on such sites too;
- Another DCN member, Elmbridge DC, adopted a Core Strategy policy (CS21) in 2011, which requires contributions to affordable housing from **all** developments leading to an increase in housing. This is in the context of a lower quartile house-price to income ratio of 21.5 (in 2015) – the fourth highest in England. From the date of the adoption of the Core Strategy to 2016, 919 units were delivered on sites of less than 10 units – this was 50% of the total net amount homes built during that period. In terms of the type of site coming forward in the Borough, 388 were for developments of fewer than 10 units – 91% of all applications given permission. In 2015/16, over half of all permissions were under 10 units and under 1000sqm. It is clear that these small sites form a significant proportion of development in the Borough and contribute significantly to both market and affordable housing provision;

- Further information was considered by Elmbridge DC with regard to sites of between 1 and 4 dwellings in size. Between the adoption of the Core Strategy in 2011 and the end of July 2015, 116 permissions were granted for developments on sites of between 1 and 4 units. The majority of these development schemes (90%) paid the total amount of affordable housing required, 11 development schemes paid a reduced financial contribution, and only one scheme saw the financial contribution waived entirely. See <http://www.elmbridge.gov.uk/EasySiteWeb/GatewayLink.aspx?allId=2159> for the full research and information, with an update (<http://www.elmbridge.gov.uk/EasySiteWeb/GatewayLink.aspx?allId=3680>) in February 2017 assessing applications and appeals from the first six months of the Ministerial Statement (which seeks no AH contributions from sites of fewer than 10 dwellings);
- Whilst Elmbridge land values are higher than in many areas of England, many other authorities (such as South Norfolk) can also point to evidence that seeking affordable housing contributions from sites of below 10 has not impacted adversely on scheme viability in the vast majority of cases, and that such sites are a vitally important source of needed affordable housing (either on-site or through off-site contributions). Applying an arbitrary national threshold of 10 dwellings for affordable dwellings is therefore opposed strongly – it should be left to LPAs, using local evidence, to justify in their Local Plans what their local affordable housing threshold should be. Considered carefully, on an evidential basis, this should not unduly affect SME developers;
- The document needs to clearly differentiate between ‘housing need’ and ‘housing requirements,’ to reflect the acknowledgement within Chapter 2 that there will be circumstances where housing need and housing targets are not the same;
- It is noted that the current ‘Planning Policy for Travellers Sites’ (2015) remains unchanged and will remain within a separate document. This is considered by some member authorities to be a missed opportunity to incorporate this area of planning policy into mainstream advice (as had been expected);
- Many Councils have noted the omission of any text relating to support for increased public sector house building (e.g. through the abolition of the Housing Revenue Account cap or equivalent for non-stock holding authorities. Support for this sector is considered crucial to the drive to increase housing delivery – especially of affordable homes;
- Whilst the broadening of the definition of affordable housing to include discounted market sales housing within the definition of affordable housing is welcomed by some authorities, concerns have been raised by others – particularly in more affluent areas where affordability is a significant issue. This tenure category was previously explicitly excluded (see feedback on Glossary below). It is also noted that the categories of homes which are exempt from making affordable housing contributions (set out in paragraph 65) has been extended to now cover self-build, Build to Rent, specialist accommodation for groups such as students and the elderly, rural exception sites and the new category of ‘entry level’ exception sites. Both sets of changes will further diminish the ability of Councils in areas with high house prices to

address their true affordability issues. However, in less affluent areas they may assist in meeting identified local needs and supporting site delivery;

- The proposal within paragraph 65 to require major sites to normally seek at least 10% of homes to be available for affordable ownership is unnecessarily proscriptive and unhelpful. It must be for LPAs, using local evidence tested through their Local Plan production process and examination, to judge what the right proportion, types and tenures of affordable housing should be across their areas (i.e. as stated in paragraph 63 of the revised NPPF). Whilst there can be little doubt that there is unmet demand for affordable home ownership across England (and the DCN supports attempts to better meet this need), for many DCN members, the larger need by far (in absolute evidential terms) is for affordable rent tenures;
- If it is required by the draft NPPF (as in paragraphs 60-62 in the consultation draft) that Local Plan policies should identify and deliver the authority's local housing needs, including affordable housing, then the NPPF should avoid setting out nationally prescribed thresholds or exception policies that will alter the delivery of identified local housing needs;
- Paragraph 66 – The requirement for strategic plans to set out a housing requirement figure for designated Neighbourhood Areas is not realistic nor is it necessary – the DCN's response to Question 11a) of *Planning for the Right Homes in the Right Places* discusses our members' concerns in some detail. To work, it would require Neighbourhood Plans to be produced in tandem with the strategic plans, whereas they arise as and when communities wish to do them. Also, it could result in no housing provision being made in a designated area if the Neighbourhood Plan did not progress. The requirement in paragraph 67 for LPAs to provide an indicative figure (if requested) is sufficient;
- Paragraph 67 sets out the position where it is not possible for a housing 'requirement figure' to be provided for a neighbourhood plan area. It is unclear how this figure should be calculated and how it should relate to locally assessed housing need. It is also noted that there is only the requirement to provide an indicative figure 'if requested to do so by the neighbourhood planning body.' It is unclear how a Neighbourhood Plan should address local housing need if such a request is not made;
- Finally, a number of DCN members – particularly, but not exclusively, from parts of the Midlands and North – are very concerned that the application of the standard methodology results in significantly lower levels of housing need than are currently adopted and/or being planned for in emerging Local Plans. This is already causing significant practical difficulties in a number of areas, where arguments are being made that current/planned numbers are "too high", thus potentially denting the ambitions of more aspirational local authorities for higher levels of economic growth. Where housing need figures using the standard methodology are significantly lower than an authority already does, or would wish to, plan for that there would be merit in the NPPF (or perhaps PPG) referencing an agreed method for housing studies, should those authorities wish to demonstrate the benefits of going above the prescribed local need figure;
- Paragraph 74 b) refers to an annual position statement. The draft PPG seems to infer that this would only be sought where the LPA believes they have a five-year land supply. Not infrequently, however, LPAs are challenged at appeal on their five-year

land supply despite having stated clearly that they do not have one, with developers seeking to argue that the deficit in the supply is even greater than that stated by the LPA. This scenario needs consideration – it is suggested that guidance states that if the LPA accept they do not have a five-year supply then this should be the basis on which the appeal is determined and no further argument ensues. Alternatively, LPAs could be given the opportunity to secure an annual position statement where they accept that they do not have a five year supply;

- Overall the process for securing an annual position statement seems very resource intensive. It relies on PINS having the resources to issue decisions quickly (which is well known to be a significant current problem); otherwise the statements will only be valid for a short period of time which may not align itself to the planning appeals where it would be useful.

Detailed comments on the DCN's concerns about the proposed change in the definition of “deliverable” housing sites are given in the Glossary comments below.

6. Building a strong, competitive economy

Q15) Do you agree with the policy changes on supporting business growth and productivity, including the approach to accommodating local business and community needs in rural areas?

The DCN is supportive of the principle of these changes. However, in relation to paragraph 83 c), it should be noted that local planning policies alone are unlikely to be able to fully address potential barriers to investment. A cross-reference in the NPPF or PPG to working with Local Enterprise Partnerships, higher-tier authorities and central government would therefore be useful to add.

Q16) Do you have any other comments on the text of chapter 6?

A number of DCN member authorities are concerned about the omission of locally “safeguarded” land from footnote 7. There are many key existing employment sites across England which are vital as locations for local jobs, and are safeguarded in existing/emerging Local Plans. However, in response to what may be short-term housing pressures, some such sites can come under pressure for conversion to (often more lucrative) housing. It is very important that the NPPF allows greater protection for such sites – footnote 7 would be a good place to include such a reference. See also the response under Question 11.

Planning reforms needs to be taken forward alongside Local Industrial Strategies and housing reforms or it may contradict Government’s economic growth ambitions.

The district role in economic growth is not purely about housing, although the DCN fully recognise the importance of new housing delivery to the country’s economy and our members’ central role in delivering more homes. The role of district councils in generating local economic growth alongside LEPs through their economic development functions must be recognised going forward in delivering stronger economies and better lives.

The DCN strongly advocates that the Industrial Strategy must encourage LEPs to align their ambitions and priorities on the local economic geographies (the place), housing markets and travel-to-work areas that residents and business recognise and relate to.

7. Ensuring the vitality of town centres

Q17) Do you agree with the policy changes on planning for identified retail needs and considering planning applications for town centre uses?

The DCN is supportive of these changes. The recognition of declining town centres in paragraph 86 (g) is important, as this is the situation facing a number of our members. The greater clarity on the sequential approach is also welcomed.

Q18) Do you have any other comments on the text of Chapter 7?

In the light of the *Rushden Lakes* decision by the Secretary of State in 2014 (see [here](#)), it would be helpful if the NPPF or PPG states, for the record, that disaggregation (of the components of a retail proposal) does not need to be considered where insufficient space is available in a sequentially-preferable location.

8. Promoting healthy and safe communities

Q19 Do you have any comments on the new policies in Chapter 8 that have not already been consulted on?

Whilst this section of the NPPF has been subject to significant revision, the changes appear logical and reasonable to DCN members.

Q20 Do you have any other comments on the text of Chapter 8?

No.

9. Promoting sustainable transport

Q21) Do you agree with the changes to the transport chapter that point to the way that all aspects of transport should be considered, both in planning for transport and assessing transport impacts?

Yes, the DCN considers that these changes are generally sensible. However, a re-wording of paragraph 108 c) is considered necessary. At present, the wording could give the impression that mitigation of significant highways impacts and/or highways safety to an acceptable degree might not be required if this could not be achieved on a cost-effective basis. This would be unacceptable, particularly on highways safety grounds. It would be better if this paragraph was re-worded to say:

“...or on highways safety can be mitigated to an acceptable degree. Mitigation should be on as cost-effective a basis as is practicable.”

There is also the potential for uncertainty and disagreement about what it meant by the terms “significant” in paragraph 108 c) and “severe” in paragraph 109, not least in the eyes of the general public. At the very least, the Glossary and/or PPG should clarify the intended difference (if any) between these two terms in the context of transport planning. If no difference is intended (and this would be supported by the DCN), then the same term should be used in the revised NPPF.

Q22) Do you agree with the policy change that recognises the importance of general aviation facilities?

Yes, this is sensible.

Q23) *Do you have any other comments on the text of Chapter 9?*

No.

10. Supporting high quality communications

Q24) *Do you have any comments on the text of Chapter 10?*

The sentiments of this chapter are supported by the DCN. Paragraph 113, in effectively seeking the “sharing” of telecommunications infrastructure between different operators, is sensible. Key to seeking the achievement of high-quality communications infrastructure, however, is an appropriate regulatory regime for the telecommunications and broadband industry. DCN members do not always find it easy to achieve effective liaison with the industry, particularly for the long-term (i.e. at the plan-making stage), so the regulatory regime should be changed to **require** effective and meaningful engagement with planning authorities through extending the Duty to Co-operate, with financial sanctions if they do not engage sufficiently with planning authorities.

The residents of a number of new developments across England are immensely frustrated by the approach of Openreach for connecting to the high-speed broadband network. There have been a number of examples of where new broadband “cabinets” have been installed in new developments (at Cringleford in South Norfolk, for example) but the first new residents have been told that there is not yet a critical mass of residents and so the cabinet will not yet be “enabled”, with no date able to be given. DCN members share the residents’ frustration, which can hinder the sale of new homes and impact adversely on the productivity of the nation (contrary to the aims of the Industrial Strategy) and urge the Government to require the early enabling of new broadband cabinets on new developments, when this could not normally be achieved through the planning system.

11. Making effective use of land

Q25 Do you agree with the proposed approaches to under-utilised land, reallocating land for other uses and making it easier to convert land which is in existing use?

The general principle is supported. However, it is important to ensure the new NPPF text does not create inappropriate pressure to release important existing or allocated employment or similar sites for housing development. As stated in previous DCN consultation responses on this point, the NPPF needs to recognise that the timescales for developing new (and/or completing existing) employment sites can be lengthy, but balancing jobs and housing is critical to sustainable development. Paragraph 120 should therefore be amended to say: “...*application coming forward **within the anticipated timescale for the use***” to reflect the fact that Local Plans might well acknowledge longer time-frames for such uses (for example, if they are dependent on new infrastructure coming forward from a new road).

Other types of strategic sites – such as port/harbour land – may also fall into this category.

As stated in the response to Question 6 above, there is also a pressing need for the NPPF to enable greater protection of existing safeguarded employment sites from conversion to housing – this is an issue of real concern to DCN members.

More generally, many DCN members remain extremely concerned about the permitted development rights for conversion of employment buildings to residential dwellings. As stated in previous consultation responses on this point, there are many examples of low-quality

conversions taking place, providing sub-standard living accommodation. The Royal Institute of Chartered Surveyors published a report on 1 May 2018 (see <http://www.rics.org/uk/news/news-insight/press-releases/lack-of-pdr-regulation-is-producing-low-quality-housing/>), which showed – through consideration of various case studies – that only 30% of conversions met national space standards. RICS recommends that CIL be chargeable on such conversions, that further safeguards are required (on space standards, for example) and that developers give consideration to the impact of conversion schemes on the wider local community. The DCN supports these recommendations.

An important worry is also the significant loss of office space that has been experienced in a number of our members' areas. For example, in Maidstone borough from 2013 to April 2017, 18,800 m² of office space has been lost through PD conversions, with a further 15,500m² submitted through prior notifications (i.e. which could happen too). New office space added during this time is 0m², so this is unbalancing local jobs and workers. This pattern can be seen more widely across south-east England, with jobs being “exported” to London and larger settlements, and additional commuters being “imported”. The DCN would urge the Government to re-visit these PD rights, with a view to ending them, or at the very least radically scaling them back.

In relation to the desire to boost the residential use of space over shops (paragraph 118 d)), the DCN supports this approach. However, our members are aware of a number of instances where many mainstream mortgage lenders are (at best) reluctant to loan on such properties at normal interest rates, and sometimes have a blanket policy of refusing to lend at all (see <http://www.thisismoney.co.uk/money/experts/article-4171842/Why-lenders-refuse-mortgage-flat-shop.html> for a recent article). The Government should discuss this matter urgently with the mortgage industry to try to mitigate the situation, and if necessary consider becoming a lender itself for this type of property.

Q26 Do you agree with the proposed approach to employing minimum density standards where there is a shortage of land for meeting identified housing needs?

The general principle is supported. However, this may be difficult to achieve in reality without quite detailed assessments being made of appropriate densities for different settlements and potentially different character areas within them. It will also be important for LPAs to be able to take full account on the character of individual areas, rather than making a blanket assumption that all will be suitable for high density proposals (see also comments on Chapter 12 below).

It would be useful if the PPG could clarify what is meant by “*Where there is an existing or anticipated shortage of land for meeting identified housing needs...*” Does it mean where LPAs cannot accommodate their housing requirement within the Plan area, or is it where there is no a five-year housing land supply or where the HDT result falls below 75%, or both?

Q27 Do you have any other comments on the text of Chapter 11?

The inclusion of a specific section on making effective use of land (albeit incorporating some text previously include elsewhere within the document) is welcomed. It is suggested, however, that as this Chapter applies to a number of different land-uses it might be better located nearer to the front of the document, perhaps after Chapter 4 (Decision-taking).

Paragraph 123 c) encourages LPAs to take a flexible approach in applying their policies and/or guidance on daylight and sunlight to ensure efficient use or re-use of a site is not compromised. Whilst the principle of this is supported (and is what is normally practised

already), the common-law “right to light” under the 1832 Prescription Act will still remain and could cause difficulties in particular cases. The PPG should be updated with new guidance to cover the potential complications that could be caused by the different policy and legislation in this area.

12. Achieving well-designed places

Q28 Do you have any comments on the changes of policy in Chapter 12 that have not already been consulted on?

The inclusion of a clear section within the NPPF relating to design is welcomed, as is the specific support given to the preparation and use of tools such as design guides and codes (paragraph 125) and the need to look at design and function over the lifetime of the development (paragraph 126).

The section would, however, benefit from some additional upfront text explicitly advocating the improvement of design quality in areas where it is currently low. The only reference to this matter in the current draft text is in the penultimate paragraph (paragraph 130), which relates to outstanding or innovative designs. The principle of seeking an uplift in overall design quality should apply more generally.

Q29 Do you have any other comments on the text of Chapter 12?

Paragraph 129 states that poor design should lead to a refusal of planning permission. As stated in a previous consultation response, our DCN members are regularly frustrated when refusals on poor design are overturned by planning inspectors. This is particularly the case where there is no five-year land supply. New developments can be expected to be in existence for a hundred years or more, and once permitted, the harm of a poor-quality development cannot be undone; what might be a temporary shortfall in housing land supply is not regarded by our members as sufficient justification for allowing a poor-quality development, which has been rejected after full and proper consideration of the merits of the application. Paragraph 129 should therefore be strengthened to reflect this sentiment, alongside the PPG section on design.

13. Protecting Green belt land

Q30) Do you agree with the proposed changes to enable greater use of brownfield land for housing in the Green Belt, and to provide for the other forms of development that are ‘not inappropriate’ in the Green Belt?

This is not opposed by the DCN – they are sensible changes.

Q31) Do you have any other comments on the text of Chapter 13?

The issue of “exceptional circumstances” to change Green Belt boundaries through a Local Plan remains a difficult issue for many Green Belt DCN members. Paragraph 136 of the draft NPPF sets out some criteria to be assessed before a GB could be changed. However, without a definition of “exceptional circumstances”, it remains unclear and uncertain as to how a particular authority could justify a GB change. Such changes (particularly larger-scale releases) are almost universally opposed by local residents, and a clearer definition of the exceptional circumstances would help clarify matters. It would still be for the particular local authority to make the particular case for a GB change through their Local Plan.

In particular, some greater clarity about whether trying to meet housing needs (perhaps across the wider housing market area) would qualify as “exceptional circumstances” (in general) would be extremely useful.

14. Meeting the challenge of climate change, flooding and coastal change

Q32) *Do you have any comments on the text of Chapter 14?*

In relation to wind energy developments (paragraph 153), the “test” of an acceptable proposal (set out in footnote 40) is that the “...*the planning impacts identified by the affected local community have been fully addressed and the proposal has their backing*”. This is an extremely high barrier to overcome and is arguably an unbalanced approach. In very few planning situations (of more significant developments) can it be demonstrated that the planning impacts are “fully addressed” – what is almost always the case is that the benefits of a scheme are balanced against the harms.

The DCN would therefore like to see the PPG altered with new text to clarify that it should be for the relevant Planning Committee (or officers under delegated powers), taking all relevant considerations into account (including representations from local residents) to decide whether particular proposals have the “backing” of the local community.

Q33) *Does paragraph 149b need any further amendment to reflect the ambitions in the Clean Growth Strategy to reduce emissions from buildings?*

No comment

15. Conserving and enhancing the natural environment

Q34 *Do you agree with the approach to clarifying and strengthening protection for areas of particular environmental importance in the context of the 25 Year Environment Plan and national infrastructure requirements, including the level of protection for ancient woodland and aged or veteran trees?*

Yes, this approach is supported. However there appears to be an error in paragraph 173 c), which needs correcting, relating to *‘irreplaceable habitats’*. Due to the very nature of irreplaceable habitats, their loss cannot be mitigated (as suggested by the words “...*and a suitable mitigation strategy exists.*”) – a better form of words might be “...*and a strategy which includes extensive mitigation measures*”.

The soil underneath ancient woodlands is also of similar ecological value to the trees themselves, even if the trees themselves are lost (due to the complexities of the ancient woodland ecosystem), so the reference in paragraph 173 c) should be changed to “...*such as an ancient woodland, including its soils*) should be...”.

Q35 *Do you have any other comments on the text of Chapter 15?*

Whilst the “agent of change” principle (paragraph 180) in relation to noise and amenity effects etc from existing businesses and community facilities on new developments is strongly supported by the DCN, in order for this principle to have the full intended effect, it will also be necessary to amend the Environmental Protection Act 1990. This is because a statement of national policy (i.e. the NPPF) cannot “trump” legislation, and so the revised NPPF could not, on its own, prevent complaints about issues that could potentially be a “statutory nuisance” being made, investigated and (potentially) acted upon.

The DCN supports the reference in paragraph 168 b) to the “intrinsic character and beauty of the countryside”.

16. Conserving and enhancing the historic environment

Q36) *Do you have any comments on the text of Chapter 16?*

No comments on this section

17. Minerals

Q37) *Do you have any comments on the changes of policy in Chapter 17, or on any other aspects of the text of this chapter?*

No comments

Q38) *Do you think that planning policy on minerals would be better contained in a separate document?*

The DCN believes that there is value in retaining all national planning policy guidance in a single document (i.e. the NPPF) so would not support this suggestion.

Q39) *Do you have any views on the utility of national and sub-national guidelines on future aggregates provision?*

No comment

Annex 1: Implementation

Q40 Do you agree with the proposed transitional arrangements?

Where authorities are close to submitting their plans, concerns have been raised that it is not sufficiently clear when the revised NPPF will come into effect and how this will impact upon the assessment of their plans. Several DCN members – including Hart DC – have been preparing Local Plans and have been proactive and taken into effect the proposed new standard methodology for housing needs, as published in September 2017. The proposed approach – whereby any plan submitted within six months of the publication of the revised NPPF (assumed to be July 2018) will be examined under the “old” NPPF – therefore has considerable potential to disrupt and delay plan-making in cases where a proactive approach to the new standard methodology has been taken. In other words, there could be a perverse (and surely unintended) incentive for some authorities to actually delay submission of their emerging Local Plan until after the six-month transition period where they have undertaken recent consultation and/or pre-submission engagement under the “new” arrangements.

The DCN therefore strongly requests that, to minimise the potential for delays in plan-making, those authorities which are minded to submit their Local Plan for examination within the six-month transition period should have the choice of having it examined under either the “old” NPPF or the “new” NPPF. Circumstances will vary between authorities, and it would obviously be appropriate for the submitting authority to be required to justify (with evidence) which approach they are taking, and why.

Further clarification would be welcome from MHCLG regarding what is meant by the final paragraph of this section (paragraph 213). This refers to the Government continuing to ‘*explore with individual areas the potential for planning freedoms and flexibilities.*’ This

reference is followed by the words *'for example, where this would facilitate an increase in the amount of housing that can be delivered.'* Are there any other circumstances envisaged where such discussions should take place?

Q41) *Do you think that any changes should be made to the Planning Policy for Traveller Sites as a result of the proposed changes to the Framework set out in this document? If so, what changes should be made?*

As stated in the DCN's response to Question 10a) of *Planning for the Right Homes in the Right Places* in autumn 2017, various changes should usefully be made to *Planning Policy for Traveller Sites*, including some guidance as to what "other relevant matters" could be in the context of determining whether some is a "gypsy and traveller", and also to make clearer how work-related nomadism should be assessed.

Guidance on the periodic reviews of housing needs for caravans and houseboats was published in draft in March 2016, but has yet to be finalised. More than two years later, and nearly two years since the Housing and Planning Act 2016 received Royal Assent, this situation must not continue – a final version of the guidance must be published as a matter of urgency.

Q42) *Do you think that any changes should be made to the Planning Policy for Waste as a result of the proposed changes to the Framework set out in this document? If so, what changes should be made?*

No comment.

Annex 2: Glossary

Q43) *Do you have any comments on the glossary?*

Affordable Housing: It is noted that the definition of 'affordable housing' has been extended to include discounted market sales housing (which was previously explicitly excluded). Concerns are raised that this will further reduce the ability of local authorities in high house price areas to deliver homes that are truly affordable to those in greatest need. The glossary refers to provisions needing to be in place to ensure this housing remains 'at a discount' for future eligible households. As a minimum this discount should be clearly specified as being at the same 20% level as the homes were originally sold with.

The omission of explicit reference to "social rented" accommodation, which is usually discounted at 40-60% of market rates, is a cause of concern to some DCN members. Whilst it is now subsumed into the 'affordable housing for rent' category, it would be preferable to be included as a separate category, as without this there is a danger that more developers would argue that they may not need to provide any "social rented" accommodation as part of a mix of affordable housing. (It is accepted that in many cases local evidence in a SHMA or similar will still show that there is a need for "social rented" accommodation.)

In order to have an ongoing impact to assist those on lower incomes into home ownership, homes for shared ownership must be classified as 'affordable' in perpetuity, as in categories a) to c). There are also advantages to units of shared ownership being developed by Registered Providers, as it gives local authorities an increased opportunity to develop

partnerships based on principles of access into affordable accommodation. It may not be as easy for local authorities to develop co-operative working on these principles with private developers. In practice, it might be better to separate shared ownership from equity loans (as a loan by definition is not in perpetuity). This issue is a significant concern to the DCN.

A clear definition of “entry level home” should also be included within this section, if such as category is to be treated as a form of affordable provision.

Annual position statement: This refers to a new requirement to consult with developers / landowners and other relevant bodies when preparing 5 year supply statements. It would be helpful if this were explicitly referenced within the NPPF itself, rather than solely within the glossary. It is noted that there does not appear to be a reference within the Planning Practice Guidance either.

Deliverable: The definition of what constitutes a ‘deliverable’ site has been significantly amended and extended through the proposed changes. This proposed change in definition would place an increasing burden on LPAs to have ‘clear evidence’ and effectively reverses the position established by the 2017 *St Modwen* case ([EWCA Civ 1643](#); see particularly paragraph 38 of that judgement) and the current NPPF definition. DCN members have very considerable concern about this proposed change.

Already it is necessary to do a thorough (realistic) assessment of the delivery potential of all sites included in the housing land supply pipeline, but this change would, at a stroke, allow many landowners and developers to attempt to discount contributions from many larger (10 dwellings+) outline planning permissions and allocations to the five-year supply pipeline. It could significantly reduce confidence in the plan-led system if the result – based solely on a change to the definition – was to lead to a lower housing land supply position.

The irony of this, of course, is that most “five-year land supply” applications (on unallocated sites) are made by landowners or land promoters – in other words, without a clear delivery partner (housebuilder) in place at the time of the application. Under such circumstances, there is unlikely to be clear evidence (in many cases) that there will be completions on such sites (of larger than 10 dwellings) within five years. Many DCN members can show evidence of many five-year supply permissions which were applied for with confidently-stated completion timetables commencing within five years but which – all too frequently, and to the considerable frustration of officers, councillors and residents – have shown precisely zero completions within this timeframe.

It is therefore not unrealistic to assume that a significant number of future five-year land supply proposals could not safely be counted at all within the five-year supply period – and so the most significant part of the reasoning such applications are being made could be given little weight, thus in many cases justifying a refusal of planning permission!

The DCN therefore urges the Government to think again on this proposed definition change, and retain the current NPPF and *St Modwen* approach.

Entry level exception site: As referred to under the housing section above, concerns are raised regarding the lack of a clear and robust definition for what constitutes ‘*entry level homes suitable for first time buyers (or equivalent, for those looking to rent).*’

Housing Delivery Test: The Government should clarify that, in publishing the HDT results every November, these will be using financial year information (i.e. the November 2018 figures will include housing completions information ending on 31st March 2018). Using any

other baseline would be highly problematic for LAs, as many years of monitoring evidence have been collected over the financial year period.

Windfall: The removal of the last sentence of the current NPPF definition is welcomed, as this change enables a windfall assumption to be made for garden sites in urban areas, which is not permissible under the current wording.