

## Draft National Planning Policy Framework - Is this the return to planning by appeal?

**The draft National Planning Policy Framework (draft NPPF) has been described as the most important planning document since the Town and Country Planning Act 1947. This may be putting it too highly but it will certainly be a very important planning document. The draft NPPF was published on 25 July and is already attracting a great deal of comment during its 12 week consultation period which ends on 17 October.**

### Approving more development

The framework states that development should be approved as long as the development complies with national planning policy - "the default answer to development is yes".

It outlines the need for local planning authorities to be "ambitious in delivering the much needed new homes that their communities need." The expectation is that local planning authorities should have a rolling five year supply of deliverable sites to meet their housing needs, which is the same as PPS3 has required, but with at least a 20% additional allowance to create competition and choice in the land market.

Another interesting provision in the draft is the requirement for Local Plans to have an inherent flexibility to respond to shifts in demand and other economic changes. It remains to be seen but it appears the Government is intending that in areas of extreme house price rises, due to a housing shortage, then the Local Plan should provide for greater housing delivery. At this point it is worth noting that the draft talks about local planning authorities adopting a Local Plan rather than the Local Development Framework suite of documents including Core Strategies. In other words, it looks as if we are going back to each local planning authority having an all-embracing Local Plan.

The requirement for offices to be built in town centres where possible has been removed, although the sequential approach remains for retail and leisure uses.

A number of bodies concerned with the protection of the countryside have raised concerns that the draft,

whilst providing clear protection for designated areas such as Green Belt and Special Protection Areas, does not adequately protect agricultural land and open countryside.

### Presumption in favour of sustainable development

The key element in the NPPF is the presumption in favour of sustainable development. The NPPF states that where a local plan is absent, silent, indeterminate or where relevant policies are out of date, then a development must be approved unless the adverse impact would significantly and demonstrably outweigh the benefits. Proposals that accord with statutory plans should be approved without delay.

While the presumption in favour of sustainable development has been welcomed by developers there are concerns about whether in reality this will mean that it is easier to obtain planning permission.

The key question is whether local planning authorities will grant more planning permissions for development as a result of the NPPF. The fear is that those local planning authorities who have always resisted development will continue to do so. The wording of the presumption in favour of sustainable development will become a key battleground. Local planning authorities may conclude that developments have adverse impacts that significantly and demonstrably outweigh the



benefits. This may well see a return to planning by appeal. It may be that many applications are incorrectly refused on an overly restrictive interpretations of the NPPF whilst the Planning Inspectorate, who will be more “on message” as to the correct interpretation, will be more likely to grant planning permission.

There are a number of other inconsistencies in the draft NPPF that could cause problems going forward. For example the draft encourages the development of neighbourhood plans, where parishes and neighbourhood forums develop a shared vision for their neighbourhood. It states: “Neighbourhood plans...must be in general conformity with the strategic policies of the local plan.” However, it then goes on to say that neighbourhood plans should take precedence over the local plan where there are conflicts. This appears contrary to recent statements by ministers who have given the clear impression that the intention is that neighbourhood plans can be a way of resulting in more development but are not to be used as a tool to resist development otherwise provided for under the Local Plan. Another area for differences in opinion is the wording relating to allocations of land for development favouring land that is less environmentally valuable however this need only be done “where practical”.

## Conclusion

The NPPF will help in creating a step change increase in development. The key question that remains to be seen, however, is whether local planning authorities take on board the NPPF’s requirements and embrace the step change or whether developers will be faced with time-consuming and expensive appeals albeit that they should be more confident of ultimate success. It is hoped that inconsistencies and lack of clarity in the draft document will be ironed out during the consultation period.



### Jason Towell

Partner

T: +44 (0)1892 506 218

E: [jason.towell@crippslaw.com](mailto:jason.towell@crippslaw.com)

**Cripps Harries Hall LLP**  
Wallside House  
12 Mount Ephraim Road  
Tunbridge Wells  
Kent TN1 1EG

T: +44 (0)1892 515 121  
F: +44 (0)1892 544 878  
E: [reception@crippslaw.com](mailto:reception@crippslaw.com)  
DX: 3954 Tunbridge Wells  
[www.crippslaw.com](http://www.crippslaw.com)

London office: 53 Chandos Place, London WC2N 4HS  
T: +44 (0)20 7930 7879

This publication gives general guidance only. It may not always apply and should not be relied on in place of specific legal advice. We use the word “partner” to refer to a member of the LLP, or an employee or consultant who is a lawyer with equivalent standing and qualifications. © Cripps Harries Hall LLP