



England planning news, August 2018

01 Aug 2018

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Headline news

Revised National Planning Policy Framework and updated Planning Practice Guidance published

Shortly before recess the Government published the revised National Planning Policy Framework (NPPF).

The Communities Secretary announced the publication of the NPPF in a written statement to Parliament, saying:

‘The new framework is fundamental to strengthening communities and to delivering the homes communities need. It sets out a comprehensive approach to ensuring the right homes are built in the right places and of the right quality, at the same time as protecting our precious natural environment’.

The Communities Secretary went on to emphasise that ‘progress must not be at the expense of quality or design’, and referred to the visual tools and design guides and codes that are promoted by the NPPF.

Updates to Planning Practice Guidance regarding viability and housing and economic development needs assessments were published on 24 July, with several more updates to follow – notably regarding town centres and heritage assets.

However, the only new guidance in the update on housing and economic development needs assessments is a guide to calculating local housing need using the standard method. The rest of the update is the deletion of the previous guidance, with notes regarding the transitional arrangements for plan making, and confirmation that the new guidance does not constitute the full guidance, which will be added in due course. The guidance also refers to a potential consultation on a revised methodology once the household projection figures are released in September, suggesting that the complete new guidance may not follow until after that time.

Lichfields has produced a blog highlighting 11 key changes made to the NPPF following consultation (see link below).

[HM Government, Revised National Planning Policy Framework Collection \(including PPG updates\), 24 July 2018](#)

[Lichfields, Revised NPPF: a new beginning at the end of a long and winding road?, 25 July 2018](#)

[Parliamentary Hansard, written statement regarding housing, 24 July 2018](#)

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Quote of the month



I am determined, however long I am given in this job, to make sure that neighbourhood plans are landed extremely well and are adopted by as much of the country as possible, and that local people know they can rely on them to make sure that planning is done with them and not to them.

Housing Minister Kit Malthouse MP, during a parliamentary debate on topical questions related to the Ministry of Housing, Communities and Local Government, 23 July 2018

Law

Secondary legislation

The Combined Authorities (Spatial Development Strategy) Regulations 2018

On 12 July, the Combined Authorities (Spatial Development Strategy) Regulations 2018 were laid before Parliament; they come into force on 9 August 2018. The Regulations confer a number of powers set out in Part VIII of the Greater London Authority Act 1999, enabling eligible authorities the powers to develop statutory spatial development strategies. As of yet, three Combined Mayoral Authorities have been granted statutory powers to develop spatial development strategies; Greater Manchester, Liverpool City Region and the West of England. The Regulations outline the details needed for the form and content of strategies, the procedural process authorities must follow, as well as details on the required documents which must accompany said spatial strategies.

[The Combined Authorities \(Spatial Development Strategy\) Regulations 2018](#)

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The New Towns Act 1981 (Local Authority Oversight) Regulations 2018

The draft New Towns Act 1981 (Local Authority Oversight) Regulations 2018 that were laid in Parliament on 4 June have been approved by Parliament and came into force on 24 July. As previously reported by Lichfields, the new

Regulations make provision for the local oversight of new town development corporations.

[The New Towns Act 1981 \(Local Authority Oversight\) Regulations 2018](#)

[Lichfields' Planning News, July 2018](#)

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The Neighbourhood Planning Act 2017 (Commencement No. 3) Regulations 2018

On 31 July Regulations 4 and 5 of the Neighbourhood Planning Act 2017 (Commencement No. 3) Regulations 2018 came into force, the effect of which was to amend section 18 of the Planning and Compulsory Purchase Act 2004, and the requirements relating to Statements of Community Involvement.

Statements of Community Involvement published from 1 August must include the local planning authority's policy for discharging the duty to give advice or assistance to qualifying bodies to facilitate proposals for neighbourhood development plans (including proposals for the modification of neighbourhood development plans) or orders.

SCIs must also state how those who might be interested will be involved in the preliminary stages of plan-making; specifically the preparation of the survey of the area and the local development scheme.

[The Neighbourhood Planning Act 2017 \(Commencement No. 3\) Regulations 2018](#)

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In the Courts

Variety of factors relevant to assessing setting of listed building and impact of proposed development on that setting

In *Catesby Estates Ltd v Steer* in the Court of Appeal, a High Court judgment has been overturned which gave a very wide interpretation of the 'setting' of a listed building, in relation to s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

In the Court of Appeal, Lindblom LJ defined the issue as being whether the Inspector had erred in law in his decision that was being challenged, in his understanding of the concept of the 'setting' of a Grade I listed building (*Kedleston Hall*).

Lindblom LJ allowed the appeal against the High Court ruling, concluding that the Inspector had not demonstrated any error of law, in finding that neither the setting of the listed building (a hotel), nor that of the conservation area, would be harmed by the development. The inspector's approach had been 'both consistent and correct', him having taken a lawful approach to identifying the setting of *Kedleston Hall*, which did not neglect historical,

social and economic considerations. His approach was not restricted to visual and physical considerations alone, and it was comprehensive and complete – Lindblom LJ concluded:

'I think his relevant conclusions are unassailable.'

According to Lindblom LJ's view of the Inspector:

'His approach to identifying the setting of each heritage asset he had to consider was, in my view, consistent and sound. So were his conclusions on the likely effect of the proposed development – or its lack of effect – on the setting in question and its impact – or lack of impact – on "significance". At no stage did he exaggerate the importance of physical and visual considerations, or unduly diminish the significance of the historical, the social and the economic.'

The Inspector's original decision was therefore restored.

[Catesby Estates Ltd v Steer](#)

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National Green Belt policy – visual impact on openness should be considered

A new High Court judgment, *Euro Garages Limited v Secretary of State for Communities and Local Government*, cites two other familiar Green Belt 'openness cases', those of *Turner v Secretary of State for Communities and Local Government* and *Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council*.

The Judge in *Euro Garages* drew all the arguments together from these previous cases and the one before him, commenting on the National Planning Policy Framework Green Belt policy in para. 89 as follows (para. 31 of the judgment):

'Pulling these points together, the policy requires the decision maker to consider and make an assessment, under bullet point [6], of whether the openness of the Green Belt is impacted or harmed by the proposals to a greater extent than that openness has already been impacted. That is an open-textured assessment and there is no check list to be gone through but, where openness of the Green Belt is in issue, visual impact, as well as spatial impact, requires consideration, subject to a margin of appreciation.'

He went on to conclude before quashing the Inspector's decision (para. 42):

'In my judgment, therefore, what the Inspector in fact did was treat any change as having a greater impact on the openness of the Green Belt, rather than considering the impact or harm, if any, wrought by the change. Although the Inspector appeared to set out the right test, she then either went wrong in her interpretation of the policy or failed to apply the policy.'

[Euro Garages Limited v Secretary of State for Communities and Local Government](#)

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Policy & Other news

National Infrastructure Commission publishes first National Infrastructure Assessment

On 10 July, the National Infrastructure Commission (NIC) published its first National Infrastructure Assessment (NIA).

The Assessment calls for the development of integrated strategies for transport, employment and housing, which should be supported through the devolution of decision-making and funding to metro mayors and city leaders.

The final chapter, 'Next Steps', also picks up on the current debate on land value capture, recommending that to improve funding and financing arrangements for infrastructure projects, to ensure that they are 'paid for at the lowest whole life cost', there is a requirement for expanding and strengthening the range of mechanisms for capturing a share of the increases in land value to finance future infrastructure schemes, as well as dropping the pooling restrictions on developer contributions.

The next step is for the Government to lay the Assessment before Parliament, and to respond to the recommendations within six months (with a final deadline of a year).

[National Infrastructure Commission, National Infrastructure Assessment](#)

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A new housing minister, and a roundup of planning speeches and debates

Kit Malthouse MP was appointed Housing Minister on 9 July following Dominic Raab's promotion.

Speeches given by the new Housing Minister and the fairly new Communities Secretary in the last month often referenced the recurrent themes of home ownership, protecting the Green Belt and good design, in the context of the-then anticipated revisions to the NPPF.

In a variation to this, in a speech at the Policy Exchange, the Communities Secretary discussed build-out rates and the reform of developer contributions, amongst other things.

Remarking on build-out rates and the interim report of the Letwin Review, the Communities Secretary said that he wanted developers to work with the

Government as partners to 'help build the homes we need' and in doing so deliver on their commitments to communities. Here the Communities Secretary conflated his concerns about build-out rates with his concerns about developer contributions. The Communities Secretary considered that there are 'too many instances of developers wriggling out of these commitments – particularly on providing affordable housing and essential infrastructure', but did not give the basis for his view.

He went on to say that communities feel let down, and are less likely to welcome new development when the system is 'stacked against them'. Accordingly, the reform of developer contributions would call for much greater transparency and hold developers to account. He then returned to build-out rates:

'In future we will require more information from developers on the timing and pace of delivery of new housing – and we're currently looking at measures that will make this reporting a compulsory requirement.'

Indeed, in response to a written question by Shadow Housing Secretary John Healey, the Communities Secretary confirmed that MHCLG had run a competitive tender to procure data on planning applications and development pipeline:

'Large sites are often complex in nature and as such the Department is currently working with the supplier to establish a robust methodology to consistently provide build-out information. This is currently being scoped and due to the complexity involved it is not possible to provide a definitive date for completion'.

Related to build-out rates was a Parliamentary debate on the five year housing supply (although the motion lapsed without the question being put). Several MPs expressed concern that despite planning permissions being granted for a significant number of dwellings, in some cases (they claimed) equal to or excess to their five year housing requirement, parts of their constituencies did not have a five year housing land supply, and therefore 'speculative' planning permissions were being granted. James Carlidge MP who secured the debate said:

'What would happen if we said tomorrow, "Councils will now be measured purely on the number of permissions they grant rather than on the build-out rate"? The answer is simple: builders would have to build-out the sites for which they had been granted permission—hey presto! That is surely how the system should work'.

In response to a written answer, and on 24 July, Lord Bourne advised:

'On 30 June 2018, there were 748,000 homes with full planning permission, of which 431,000 were on projects which had started on site, and 317,000 had yet to start on site. Of these 748,000 homes, 86 per cent are on sites of 50 or more dwellings'.

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The Lichfields perspective



The revised NPPF has a much more housing and plan-led focus than NPPF 2012, but there are important changes for other development sectors too. Of the changes in the final version compared with the draft, of particular note are amendments relating to viability assessments, small sites, and assessment of the harm to designated heritage assets. Critically for plan-making, the Government's response to the consultation on the draft revised NPPF mentions a potential new consultation on an adjustment to the standardised housing methodology in September, after revised household projections are released, to ensure that the standardised methodology leads to more housing being built.

Giorgio Wetzl, Policy Researcher

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