

28 FEBRUARY 2023

PR2-23 | LEVELLING UP AND REGENERATION BILL – REFORMS TO NATIONAL PLANNING POLICY

Introduction

We are writing in response to the government's consultation on the Levelling Up and Regeneration Bill: Reforms to National Planning Policy.

The National Association of Local Councils (NALC) is the national membership body that works with the 43 county associations of local councils to represent and support England's 10,000 local (parish and town) councils.

Local councils and their 100,000 councillors are the first tier of local government, closest to the people, and play an essential part in delivering hyper local services, building strong communities, and strengthening social fabric.

Local councils cover two thirds of England and a third of the population and invest over £3 billion per year to improve and strengthen communities.

Summary

In updating the National Planning Policy Framework (NPPF) the government's priorities should include:

- **Climate/Environment:** Providing a suitable framework to meet the UK's climate and environmental commitments, including through design codes, local environment improvement plans and other mechanisms to check that net zero targets are being met with appropriate action.
- **Plans:** Giving more weight to land allocation in Local Plans and also more weight and protection to Neighbourhood Plans when taking decisions.
- **Devolution:** Devolving accountability for planning with greater freedoms in areas that want to innovate and experiment with planning policy to find out what works for them.
- **Infrastructure:** Better integration of plan making with energy, transport, and other infrastructure provision to support better connected/more sustainable development.

- Backing local action, including reforming the planning system to put net zero at its heart nationally and locally.
- NALC is arguing for the complete removal of the whole concept of National Development Management Policies (NDMPs) which will have the effect of unjustly trumping any local or neighbourhood plan.
- NALC supports the whole concept of neighbourhood plans and thinks that they provide an excellent bridge between local councils, planning authorities and developers. We believe that neighbourhood planning should be strengthened and protected, including through greater funding and powers for local councils as 90% or so of neighbourhood plans are managed by local councils.

Mission Zero

In addition, NALC endorses the thrust of 'Mission Zero', the independent review of the government's approach to delivering its net zero target which was led by the Rt. Hon Chris Skidmore MP and published by the Department for Business, Energy, and Industrial Strategy in January 2023. We also support the report's proposal that there should be a 'net zero test' to ensure that planning is fully aligned with a net zero future. We also support the reports call for greater clarity on when areas can exceed national standards, for guidance on local area energy planning, and the creation of 'net zero' neighbourhood plans, plus the following recommendations:

- Delivering energy efficient homes, including legislating for the Future Homes Standard so that no new homes will be built with a gas boiler from 2025, adopting a 10-year mission to make heat pumps a widespread technology in the UK.
- Using infrastructure to unlock net zero, including developing a cross-sectoral infrastructure strategy by 2025 to support the building and adaptation of new green energy sources such as hydrogen to support the green economy.

Overarching policy statement

In October 2020 NALC included the below overarching planning policy statement in its response to the three main Planning White Paper consultations launched that summer – these positions still hold true in response to this consultation:

1. NALC has signed up to the proposition that there is a climate emergency and will therefore, as a general principle, promote and support moves and policies which help to mitigate it. For instance, NALC supports the need for Local Plans and large developments to be subject to environmental appraisals and it supports energy efficient homes and more trees.
2. NALC will support a planning system which incorporates a significant role for local (parish and town) councils. It will not support any diminution of local councils' statutory right to comment on planning issues at all stages of their evolution, whether they be development planning matters or spatial planning policies.
3. NALC will support a soundly based planning system which represents the most reliable tool for the sustainable allocation of land, and which represents the three pillars of sustainability equally, i.e., social, economic, and environmental factors.
4. NALC will support changes to the planning system which it perceives will strengthen the system and the voice of democracy and lead to better quality, appropriately sited developments. It will not support planning changes which it perceives will work in the opposite direction.
5. NALC would support a very much strengthened version of the 'duty to co-operate' between neighbouring local authorities (LAs) or an alternative policy which made it compulsory for neighbouring LAs to work in close co-operation with each other on spatial planning.
6. NALC does not support an across-the-board extension of permitted development rights in the planning system. Policies on permitted development rights should be the prerogative of LAs in their Local Plans or Neighbourhood Planning Groups.
7. NALC supports the recommendations of the Building Better, Building Beautiful Commission.
8. NALC recognises the need for more affordable housing and would welcome initiatives that would enable LAs and local councils to deliver some. In addition, NALC would like to see more housing delivered that is suitable for the disabled and those with mobility impairments and a range of different types of tenures facilitated.

9. NALC wants to see a fair infrastructure levy system which gives local councils a voice and benefits them financially so that they in turn can deliver more for their local communities.

10. NALC has concerns about housing tests based on standard methodologies/ algorithms. It wants to see a planning system which recognises that every planning application and every location is different.

We would also like to make an additional over-arching comment in relation to this consultation. The prospectus is lacking in some important details and crucial background documents are still awaited, e.g., updated planning practice guidance. This has made the task of responding to many of the questions difficult. It is also unclear how local communities will be 'empowered' when the declared intention is to speed up the spatial planning process and to give powers to the secretary of state which would enable the government to override local and neighbourhood plans that have been through full process. These matters need to be clarified.

Consultation questions

NALC's responses to the main consultation questions applicable to local councils in the consultation document are below:

Q1. Do you agree that local planning authorities should not have to continually demonstrate a deliverable 5-year housing land supply (5YHLS) for as long as the housing requirement set out in its strategic policies is less than 5 years old?

A1. NALC agrees that the requirement for a 5-year housing land supply requirement should be dropped. It has led to the over-ruling of local and neighbourhood plan policies and any amount of speculative and inappropriate development. But we do not believe its cessation should be tied to a requirement for adopted strategic housing policies of less than five years standing to be in place.

The government has said it wants to see local planning authorities reviewing their local plans every five years. We would contend that this is an impractical requirement that places impossible pressures on LAs and on neighbourhood planning groups whose plans are aligned to the local plans. A review every 10 years would be demanding enough. The emphasis should be on the quality and the soundness of the plans and not on the speed with which it might be possible to produce them.

We would like to see a ruling that where an up-to-date local or neighbourhood plan is in place, development of inappropriate and unallocated sites will not be permitted. Also, there needs to be a more flexible approach to housing land supply, especially for LAs that can demonstrate they are promoting adequate developments over the longer term.

Q.2: Do you agree that buffers should not be required as part of 5YHLS calculations (this includes the 20% buffer as applied by the Housing Delivery Test)?

A.2: Yes. The requirement to allocate additional housing on top of high housing targets has led to many permissions being granted for unsuitable sites, especially on appeal.

Q.3: Should an oversupply of homes early in a plan period be taken into consideration when calculating a 5YHLS later, or is there an alternative approach that is preferable?

A.3: Yes.

Q.4: What should any planning guidance dealing with oversupply and undersupply say?

A.4: Timescales are key here.

Q.5: Do you have any views about the potential changes to paragraph 14 of the existing Framework and increasing the protection given to neighbourhood plans?

A.5: As we say in our response to question one, the government's expectation that Local Plans, and therefore Neighbourhood Plans, should be renewed every five years is too onerous. The capacity does not exist either within local authority planning departments or within local communities to achieve this and in any event, we contend that it is far more important to achieve well conceived spatial plans that have carefully taken into account all relevant factors and local opinion, and which have been thoroughly scrutinised. We believe a 10-year review period is more realistic. Therefore, the protection for both types of plans should be extended to 10 years.

Q.6: Do you agree that the opening chapters of the Framework should be revised to be clearer about the importance of planning for the homes and other development our communities need?

A.6: Yes.

Q.7: What are your views on the implications these changes may have on plan-making and housing supply?

A.7: We totally concur with the need to have a plan-led system, but it is essential that the plans are sufficiently robust, are based on local needs and take into consideration the particular local circumstances, constraints and possibilities that exist in each area. The government says it is committed to 'empowering communities' and giving them more say. It must recognise that this means allowing sufficient time for proper community involvement and allowing sufficient opportunities in spatial plans for local detail and flexibility to be expressed.

Q.8: Do you agree that policy and guidance should be clearer on what may constitute an exceptional circumstance for the use of an alternative approach for assessing local housing needs? Are there other issues we should consider alongside those set out above?

A.8: Yes. There needs to be an explicit policy on what constitutes 'exceptional circumstances'. We note that there appears to be scope for LAs to use new/different methods for calculating housing need (in paragraph 61). But, as the planning practice guidance on assessing housing need has yet to be updated, making a proper judgement is difficult.

Q.9: Do you agree that national policy should make clear that Green Belt does not need to be reviewed or altered when making plans, that building at densities significantly out-of-character with an existing area may be considered in assessing whether housing need can be met, and that past over-supply may be taken into account?

A.9. Yes. It has proved to be far too easy for Green Belt land to be released for development since the NPPF was introduced. Several reports by CPRE, formerly the Campaign to Protect Rural England, including their regular 'State of the Green Belt' assessments, have proved this point. We are therefore pleased to see an indication of a brownfield first approach. However, this should not just apply to cities, it should be a generic policy.

Q.10: Do you have views on what evidence local planning authorities should be expected to provide when making the case that need could only be met by building at densities significantly out-of-character with the existing area?

A.10: Yes. A Design Code will provide the necessary evidence to establish whether building densities remain within character for the area. Higher densities in built-up areas maximises the use of brownfield land but must still be justified. In rural and semi-rural areas, it is important not to change the character of settlements. This is where the new Design Codes can come in. They should not be just about the look of buildings, but about their mass, the spaces in-between them and their settings.

Q.11: Do you agree with removing the explicit requirement for plans to be ‘justified’, on the basis of delivering a more proportionate approach to examination?

A.11: No. If the government genuinely want local communities to have more say on planning, then they must retain the word ‘justified’. This allows community groups and local councils the opportunity to demonstrate that, in some instances, there has been a lack of consideration of reasonable alternatives.

Q.12: Do you agree with our proposal to not apply revised tests of soundness to plans at more advanced stages of preparation? If no, which if any, plans should the revised tests apply to?

A.12: No. The proposals in the consultation would mean that local planning authorities would not have the flexibility to make revisions. It must be possible for LAs to make modifications, preferably from the pre-submission stage onwards.

Q.13: Do you agree that we should make a change to the Framework on the application of the urban uplift?

A.13: Yes. It is unclear why the proposal in relation to the use of brownfield is limited to the largest urban areas (i.e., cities). It should relate to all urban areas.

The selection of the 20 largest cities and urban centres for a 35% uplift in housing numbers misunderstands the geography of large parts of the country. Some of the local authorities that include these cities also have a significant proportion of their population in smaller towns and villages that are also subject to the urban uplift. The urban uplift strategy is also inconsistent with the government’s devolution strategy, particularly the metropolitan combined authorities. The current urban uplift strategy, by artificially increasing developments in only part of the metropolitan county, distorts the ability to develop a spatial development strategy. Finally, because the guidance only states that it “expects” development to take place within the urban centre this imposes greater pressures on areas outside the urban cities which are favoured by many developers.

Q.14: What, if any, additional policy or guidance could the department provide which could help support authorities plan for more homes in urban areas where the uplift applies?

A.14: A more effective way of encouraging more urban development would be to increase numbers of settlements to those with the 50 largest populations and adjust the figures for individual local authorities so that the urban uplift only applied to the population within the urban areas. We would also suggest the sharing of good practice examples.

Q.15: How, if at all, should neighbouring authorities consider the urban uplift applying, where part of those neighbouring authorities also functions as part of the wider economic, transport or housing market for the core town/city?

A.15: For metropolitan mayoral authorities the decision on where additional development associated with any urban uplift calculation should be devolved to the Mayor.

Q.22 Do you agree that the government should revise national planning policy to attach more weight to Social Rent in planning policies and decisions? If yes, do you have any specific suggestions on the best mechanisms for doing this?

A.22: Yes – and we would point to Sir Oliver Letwin’s ‘Independent Review of Build Out Rates’, published in 2018. This recommended a stronger approach to providing social housing. Letwin concluded that if more social housing – and other types of tenures – were offered for sale, then the build-out rates would be “substantially accelerated” (para, 4.26, page 16).

Q.23: Do you agree that we should amend existing paragraph 62 of the Framework to support the supply of specialist older people’s housing?

A.23: Yes. People are living longer and the percentage of older people in the population is increasing. It is very important that, as people age, they are supported to remain independent as long as possible. It is also important that the housing mix allows people the opportunity to downsize when family circumstances allow. However, it may well be the case that they need properly adapted accommodation that is all on one level. There is a desperate need for a greater choice of housing for older people. Policies which will help to bring this about are essential.

Q.24 Do you have views on the effectiveness of the existing small sites policy in the National Planning Policy Framework (set out in paragraph 69 of the existing Framework)?

A.24: Yes. Small sites frequently deliver housing that is better integrated within existing communities and is often more likely to be in character.

Q.25 How, if at all, do you think the policy could be strengthened to encourage greater use of small sites, especially those that will deliver high levels of affordable housing?

A.25: Small sites are generally developed by SME developers who are generally more in tune with local community needs than national developers.

Q.26: Should the definition of “affordable housing for rent” in the Framework glossary be amended to make it easier for organisations that are not Registered Providers – in particular, community-led developers and almshouses – to develop new affordable homes?

A.26: Yes. The current definition of ‘affordable housing for rent’ is at least 20% below local market rents. With the increase in house prices and in rents, this criterion is not working. It needs to be reviewed.

We support the suggestion which the department is making to extend the concept of registered social landlords to include community groups that have more modest ambitions regarding the provision of housing locally. This would include almshouse trusts and local councils.

Q.27: Are there any changes that could be made to exception site policy that would make it easier for community groups to bring forward affordable housing?

A.27: Yes. Many communities have set up Community Land Trusts to address the lack of affordable homes.

Q.28: Is there anything else that you think would help community groups in delivering affordable housing on exception sites?

A.28: Yes – strengthen NPs.

Q.29: Is there anything else national planning policy could do to support community-led developments?

A.29: It is unclear why community groups are the focus of attention, to the exclusion of any mention of local councils – which have the ability to precept. It should be made easier for those local councils that wish to provide affordable social housing to do so and it should be possible for them to access appropriate funding streams. In response to other consultations, we have frequently made the point that local councils ought to be able to apply for the same funding streams that principal authorities can apply to. Also see our earlier answer to question 26.

Q.30: Do you agree in principle that an applicant's past behaviour should be taken into account into decision making? If yes, what past behaviour should be in scope?

A.30: Yes. Many general members of the public cannot understand why a developer's past behaviour cannot be taken into account when granting new planning permissions. So, we support the introduction of some criteria which would enable an LA to take some account of a developer's past behaviour.

Q.31: Of the 2 options above, what would be the most effective mechanism? Are there any alternative mechanisms?

A.31: Option 2 is probably the better option.

Q.32 Do you agree that the three build out policy measures that we propose to introduce through policy will help incentivise developers to build out more quickly? Do you have any comments on the design of these policy measures?

A.32: No. There have to be stronger policies requiring a greater diversity of housing tenures and types of new development as recommended by Sir Oliver Letwin in his 'Independent Review of Build Out Rates' in 2018. See our response to question 22.

Q.33: Do you agree with making changes to emphasise the role of beauty and placemaking in strategic policies and to further encourage well-designed and beautiful development?

A.33: Yes. It is difficult to imagine that anyone would disagree with this aim. That said, it needs to be understood that there are many aspects that contribute to well-designed and beautiful places. It is not just about the buildings themselves but about the layout of developments, green infrastructure, and the quality of the public realm. Poorly maintained roads and pavements and a lack of trees and green spaces can seriously detract from efforts to improve building design. These features should, therefore, be included in design codes.

Also included within the Design Codes for each LA should be new or updated versions of Village Design Statements (VDSs). VDSs were an initiative of the

Countryside Commission from the mid 1990s until their disbandment whereby local communities could describe the distinctive characteristics of their areas and have some influence on their future design. Advisory publications set out the process for eventually achieving their adoption as Supplementary Planning Documents and funding was available to provide training for local VDS groups via community councils. (Local councils had to be involved in the process, but not lead them). We would like to see this initiative re-launched and, where possible, VDSs which are otherwise still relevant, but which have out-dated references being updated and re-adopted as Supplementary Plans.

Q.34: Do you agree to the proposed changes to the title of Chapter 12, existing paragraphs 84a and 124c to include the word ‘beautiful’ when referring to ‘well-designed places’ to further encourage well-designed and beautiful development?

A.34: Yes.

Q.35: Do you agree greater visual clarity on design requirements set out in planning conditions should be encouraged to support effective enforcement action?

A.35: Yes. There should be references to the relevant parts of the design code, including references to any relevant Village Design Statements. (See response to Q.33).

Q.38 Do you agree that this is the right approach to making sure that the food production value of high value farmland is adequately weighted in the planning process, in addition to current references in the Framework on best and most versatile agricultural land?

A.38: No. The different iterations of the NPPF have weakened the approach to ‘best and most versatile’ land. The policy wording now needs reviewing in order to strengthen it.

Q.39: What method and actions could provide a proportionate and effective means of undertaking a carbon impact assessment that would incorporate all measurable carbon demand created from plan-making and planning decisions?

A.39: Carbon data is already fairly readily available and LAs already have the power to refuse planning applications that do not contribute to achieving the net zero commitments. The problems lie with insufficient actions being taken.

There should be a requirement for all local plans to contain their own strategy for delivering net zero – and whether or not they have a sufficient strong policy should be part of the soundness test at the examination in public. Also, LAs – and

local councils – need more powers and resources to retrofit existing buildings and infrastructure and help them achieve de-carbonisation. In addition, there is an identified need to train many more people with the appropriate skills to deliver new technologies such as ground and air heat pumps and there is a need for more investment in bringing forward new technologies such as those related to hydrogen and carbon capture.

The NPPF should be extended to include specific reference to the important and strategic role of local councils, however small, in making a reality of a more localised approach to climate change mitigation by means of initiating much smaller-scale energy schemes than the Levelling Up and Regeneration Bill currently envisages.

Proposed revisions to NPPF should specifically address the potential scope to facilitate and simplify the planning process for these smaller-scale local projects initiated by both parishes on behalf of their communities and also by local individuals, including local landowners and farmers, investing in their own projects within their communities.

Q.40 Do you have any views on how planning policy could support climate change adaptation further, including through the use of nature-based solutions which provide multi-functional benefits?

A.40: Effective climate change adaptation planning needs to follow a logical process, i.e., assess the climate change risks, identify options and plan, fund and implement the actions and monitor and review. The third National Adaptation Programme (for the next five years) is due to be published this year. It will set out what the role of local government is expected to be, and it should be providing help, guidance, and resources to enable councils to take action.

Climate change is having varying effects in different parts of the UK and so every principal authority and every local council needs to have an individual plan. But local government resources are stretched and there are capacity issues, knowledge and skills issues. A year ago, a report published by Climate Emergency UK found that one in five principal authorities did not have climate action plans. Local government needs as much help as central government to enable it to understand the impacts of climate change and to build resilience for it.

One relatively simple action would be for the government to impose the Future Homes and Future Building Standards rules much sooner than the present proposal (i.e., to come into effect from 2025). LAs should be given the power to refuse planning applications for buildings which are not energy efficient from the end of this year at the latest.

Financial assistance could be made available to both principal and local councils to provide electric vehicle charging points and barriers removed which prevent local councils from being able to sell electricity.

The government could also provide consistent backing and messaging to support local highway authority decisions on reallocating road space.

As far as nature-based solutions are concerned, we have concerns about biodiversity net gain (BNG) – which does not appear to be working as anticipated. The BNG policy requires an urgent early review. There needs to be a logical process.

For instance, Draughton Parish Council's project for a renewable energy installation has completed a feasibility study, commissioned by the council (using Lottery grant funding), and prepared by consultants, and the council also completed a professional review of the underlying assumptions and financial projections of costs built into the feasibility report. The proposal the council has raised, for using spare local capacity in the national grid on a nationwide basis, parish area by parish area, is based on discussions between Draughton Parish Council and its consultants.

Q.44: Do you agree with our proposed Paragraph 161 in the National Planning Policy Framework to give significant weight to proposals which allow the adaptation of existing buildings to improve their energy performance?

A.44: Yes, we do. We support the introduction of paragraph 161 in the NPPF, regarding energy efficiency.

Q.45: Do you agree with the proposed timeline for finalising local plans, minerals and waste plans and spatial development strategies being prepared under the current system? If no, what alternative timeline would you propose?

A.45: No. We do not agree that the timeline for producing spatial plans should be drastically reduced or that the plans should be 'simpler'. Producing good quality spatial plans in a way that allows full access by stakeholders and ensures that the end product is a high quality one, well tailored to the area covered, is a demanding process, but one which must be upheld. And if insufficient detail is in the plans, that merely opens them up to legal challenges.

In addition, as the RTPI argues, there is a need for much better integration in plan-making – most particularly with transport and energy policies. Better integration will not be achieved by shortening the timeline for producing plans. In any event, it is widely acknowledged that there are already major stresses in the planning system in local government and a shortage of qualified planners.

Q.46: Do you agree with the proposed transitional arrangements for plans under the future system? If no, what alternative arrangements would you propose?

A.46: No.

Q.47: Do you agree with the proposed timeline for preparing neighbourhood plans under the future system? If no, what alternative timeline would you propose?

A.47: No – as stated in response to previous questions. The timeline for both local and neighbourhood plans should be 10 years if the final outcomes are to be sound.

Q.48: Do you agree with the proposed transitional arrangements for supplementary planning documents? If no, what alternative arrangements would you propose?

A.48: No. It should be possible for updated versions of supplementary planning documents to be easily re-adopted as the new ‘Supplementary Plans’, rather than there being an expectation that, when new local plans officially come into being, the supplementary documents attached to them should all need to be revised from square one. Especially those where there has been a large degree of effort by the local community, e.g., Parish Plans and Village Design Statements.

Q.49 Do you agree with the suggested scope and principles for guiding National Development Management Policies?

A.49: No. We most strongly disagree. The Levelling Up and Regeneration Bill intends to give primacy to National Development Management Policies. This would overturn the principle set by The Town and Country Planning Act in 1990 – that locally set development management policies only need to be in general conformity with national policy. However, it gave them the right to vary from strict adherence due to local circumstances and it gave the local development plans precedence. In future, if NDMPs are adopted, the locally produced Development Plans would only be acceptable if their policies did not digress in any way from national ones, which could be subject to ongoing change. Local innovations and variations would not be welcome or possible.

And, as part of the change proposed, the Secretary of State would be awarded unilateral powers to change policies, make new ones or rescind existing ones – with or without consultation. This would be completely contrary to the government’s declared intention in both the introduction (para. 1) and the Policy Objectives chapter (point. No. 6, chapter 2) to this consultation to “empower communities” because it would have completely the opposite effect. If, for instance, there was a clash between a local policy and a national one, the national

one would prevail – despite it not having been subject to the same level of public scrutiny. This would be an undemocratic state of affairs.

Q.50 What other principles, if any, do you believe should inform the scope of National Development Management Policies?

A.50: No. We do not support the coming into existence of National Development Management Policies. They are undemocratic and should be withdrawn from the Bill. (See our response to Q.49).

Q.51: Do you agree that selective additions should be considered for proposals to complement existing national policies for guiding decisions?

A.51: No.

Q.52: Are there other issues which apply across all or most of England that you think should be considered as possible options for National Development Management Policies?

A.52: It would depend how they were framed. The former Planning Policy Guidance documents and the Planning Policy Statements set an appropriate framework for the planning system to operate within. However, local authorities had the ability to ‘customise’ to a certain extent how they were interpreted, and the Town and Country Planning Act of 1990 set the principle that locally agreed development management policies took precedence over national policies.

Q.55: Do you think that the government could go further in national policy, to increase development on brownfield land within city and town centres, with a view to facilitating gentle densification of our urban cores?

A.55: Yes. There should be a generic ‘brownfield first’ policy and we want to emphasise that it must be a clear and explicit policy, and not just a footnote. One of our colleagues in the Rural Coalition, CPRE, formerly the Campaign to Protect Rural England, has done much research into brownfield land and regeneration. They provided evidence in their most recent report, ‘State of Brownfield 2022’, (published in December 2022), that there is capacity for 1.2 million homes on brownfield sites covering more than 27,000 hectares of land – 399,458 in London alone.

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